

**UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF
TEXAS, DALLAS DIVISION**

In Re: Highland Capital Management, L.P § Case No. 19-34054-SGJ-11

Highland Capital Management Fund Advisors, L.P.

et al §

Appellant §

vs. §

Highland Capital Management, L.P.,

§ 3:21-CV-00538-N

Appellee §

[1943] Order confirming the fifth amended chapter 11 plan, Entered on 2/22/2021.

**APPELLANT RECORD
VOLUME 6**

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ATTORNEYS FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P. AND
NEXPOINT ADVISORS, L.P.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.

Debtor.

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) Chapter 11
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) Case No. 19-34054 (SGJ11)
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INDEX

**AMENDED DESIGNATION BY NEXPOINT ADVISORS, L.P. AND HIGHLAND
CAPITAL MANAGEMENT FUND ADVISORS, L.P.
OF ITEMS FOR THE RECORD ON APPEAL**

COME NOW Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (the "Appellants"), creditors and parties-in-interest in the above styled and numbered bankruptcy case (the "Bankruptcy Case") of Highland Capital Management, L.P. (the "Debtor"), and, with respect to their *Notice of Appeal* [docket no. 1957], hereby file their *Amended Designation of Items for the Record on Appeal* (the "Designation") as follows:

Item	Bankruptcy Docket Number	Description
Pleadings and Items on Docket		
Vol. 1 000001	1 1957	Notice of Appeal
	2 1943	Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief
000165 000326	3	Docket Sheet of Bankruptcy Case No. 19-34054
Vol. 2 000639	4 1606	Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.
	5 1648	Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith
000666	6 1656	Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.
000675	7 1670	Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.
000820	8 1719	Second Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith
000870	9 1749	Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith
Vol. 3 000880	10 1772	Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.
000886	11 1791	Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan
000901	12 1807	Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management
000906	13 1808	Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)
001031	14 1811	Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)
Vol. 4 001097	15 1814	Debtor's Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.
Vol. 5 001346		

Vol 5	16	1847	Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith
001414	17	1873	Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith
001421	18	1875	Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)
001427	19	1887	Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.
001475	20	1671	United States Trustee's Limited Objection to Confirmation of Debtors' Fifth Amended Plan of Reorganization
001482	Evidence and Transcripts		
001488	21	1894	Transcript of February 2, 2021 Confirmation Hearing
001783	22	1905	Transcript of February 3, 2021 Confirmation Hearing
002040	23	1917	Transcript of February 8, 2021 Bench Ruling
002091	24	1794	All exhibits admitted into evidence during February 2 and February 3, 2021 Confirmation Hearing
002188		1795	
Vol 12 - 002931		1822*	
Vol 50 - 013295		1863	
- 013297		1866	
Vol. 51 - 013373		1877	
Vol. 54 - 014182		1895	
Vol. 55 - 014506		1915	

*1822 - Vol. 12 - 50 (39 VOLUMES)

RESPECTFULLY SUBMITTED this 22d day of March, 2021.

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**ATTORNEYS FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P. AND
NEXPOINT ADVISORS, L.P.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 22d day of March, 2021, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof, including on counsel for the Debtor.

By: /s/ Davor Rukavina
Davor Rukavina, Esq.

Seery - Direct

76

1 stipulation?

2 A Yes.

3 Q And as you recall, Mr. Seery, in the events leading up to
4 the entry of the order approving the settlement, was this one
5 of the documents that was being negotiated among -- among the
6 parties?

7 A Yes, it was.

8 Q Okay. You mentioned that there were certain provisions of
9 the January 9th order that were important to you and the other
10 independent directors. Do I have that right?

11 A Yes.

12 MR. MORRIS: Let's see if we can back to Exhibit 5Q,
13 please, Paragraph 4.

14 BY MR. MORRIS:

15 Q Okay. Paragraph 4, can you tell me what Paragraph -- what
16 Paragraph 4 is and why it was important to you?

17 A Well, there really were four key, I guess I'll use the
18 term gating items again, for my involvement, and ultimately in
19 discussions with Mr. Nelms and Mr. Dondero -- Mr. Dubel, their
20 involvement in the matter.

21 Because of the litigious nature of the Highland operations
22 and the expectations we had for more litigation after taking a
23 look at the Acis case, we wanted to make sure that, as
24 independents coming into a situation with really no stake in
25 the particular outcome, other than trying to achieve a

001563

Seery - Direct

77

1 successful reorganization, that we were protected. So, number
2 one, I looked at the limited partnership agreement. I wanted
3 to make sure that the LPA contained broad and at least
4 standard indemnification provisions and that they would apply
5 to the board.

6 Number two, because -- that then requires you to look at
7 the indemnification provisions at Strand, because you're a
8 director of Strand, the GP. So then we looked at those. I
9 took a close examination of those. They looked okay, except
10 Strand didn't have any assets other than its equity interest
11 in Highland, and if that equity interest turned out to be
12 zero, that indemnity wouldn't be very valuable.

13 So I wanted to make sure that Highland, the Debtor,
14 guaranteed the indemnity (garbled) on a postpetition basis, so
15 that if there were a failure of D&O, which I'll get to in a
16 second, or it wasn't enough, that we would have a senior claim
17 in the case, an admin claim in the case.

18 I then, of course, wanted to make sure that we had D&O
19 insurance. This was very difficult to get, because, frankly,
20 there's a Dondero exclusion in some of the markets, we've been
21 told by our insurance brokers, and so getting the right policy
22 that would cover the independent board was difficult. We did
23 get that.

24 And then ultimately there'll be another provision in the
25 agreement here -- I don't see it off the top of my head -- but

001564

Seery - Direct

78

1 a gatekeeper provision. And that provision --

2 Q Hold on one second, Mr. Seery, because we'd want to
3 scroll. So Paragraph 4 and Paragraph 5, were those, were
4 those provisions put in there at the insistence of the
5 prospective independent directors?

6 A Yes. And remember, so the Paragraph 4, as I said, is the
7 guarantee of Strand's obligations for its indemnity. Again,
8 Strand didn't have any money, so the Debtor had to be the one
9 purchasing the D&O for the directors and for Strand. So those
10 are the two provisions that really worked to address my
11 concerns about the indemnities and then the D&O.

12 MR. MORRIS: Okay. Can we go to Paragraph 10,
13 please? There you go.

14 BY MR. MORRIS:

15 Q Is this the other provision that you were referring to?

16 A This is. It's come to be known as the gatekeeper
17 provision, but it's a provision that I actually got from other
18 cases. Again, another very litigious case that I thought it
19 was appropriate to bring in to this case.

20 And the concept here is that when you're dealing with
21 parties that seem to be willing to engage in decade-long
22 litigation in multiple forums, not only domestically but even
23 throughout the world, it seemed important and prudent for me
24 and a requirement that I set out that somebody would have to
25 come to this Court, the court with jurisdiction over these

001565

Seery - Direct

79

1 matters, to determine whether there was a colorable claim.
2 And that colorable claim would have to show gross negligence
3 and willful misconduct, *i.e.*, something that would not
4 otherwise be indemnified.

5 So it basically sets an exculpation standard for
6 negligence. It exculpates the directors from negligence. And
7 if somebody wants to bring a cause against the directors, they
8 have to come to this Court first and get a finding that
9 there's a colorable claim for gross negligence or willful
10 misconduct.

11 Q Would you have accepted the engagement as an independent
12 director without the Paragraphs 4, 5, and 10 that we just
13 looked at?

14 A No. These were very specific requests. The language here
15 has been 'smithed, to be sure, but I provided the original
16 language for 10 and insisted on the guaranty provision above
17 to assure that the indemnity would have some support.

18 Q And ultimately, did the Committee and the Debtor agree to
19 provide all of the protection afforded by Paragraphs 4, 5, and
20 10?

21 A Yes.

22 Q Okay.

23 MR. MORRIS: Your Honor, we're going to move on now
24 to good faith, Section 1129(e)(3), just to give you a little
25 bit of a roadmap of where we're going.

001566

Seery - Direct

80

1 BY MR. MORRIS:

2 Q Let's talk about the process that led to the plan that the
3 Debtor is asking the Court to confirm today. Real basic stuff
4 at the beginning. Can you tell me your understanding of the
5 makeup of the UCC, of the Creditors' Committee?

6 A The Creditors' Committee in this case has four members.
7 It's UBS, the Redeemer Committee, which are former holders of
8 interests in a fund called the Crusader Fund, which was a
9 Highland fund, who had redeemed and then had a dispute with
10 Highland.

11 And the next creditor is Mr. Terry and Acis. We generally
12 group them as one, but the creditor is Acis.

13 And the fourth creditor is an entity called Meta-e, and
14 they provide litigation support and technical support and
15 discovery support in litigations for the Debtor, including in
16 this case now.

17 Q All right. Just focusing really on the early period, the
18 first few months, can you describe the early stages of the
19 negotiations with the UCC as best as you can recall?

20 A Well, I think the early stage of the case wasn't directly
21 a negotiation; it was really trying to understand as best we
22 could the myriad of assets that we had here, the various
23 businesses that the Debtor either owned, controlled, or
24 managed, as well as the claims.

25 We went through a process of trying to understand each of

001567

Seery - Direct

81

1 the claims that the Debtor -- or against the Debtor that were
2 represented by the Committee, as well as some other claims
3 that were not on the Committee.

4 Q Was the Debtor -- I mean, was the Committee initially
5 pushing the independent board to go to a monetization plan, an
6 asset monetization plan?

7 A Very quickly and early on, the Debtor -- the Committee
8 took a pretty aggressive approach with the Debtor and the
9 independent board. I think the Committee's perspective, as
10 articulated to me, and where -- at least how we took it, was
11 that they'd been litigating for years and they sort of knew
12 the situation and the value of their claims, that the Debtor
13 was insolvent, in their view, and that we should be operating
14 the estate in essence for the benefit of the creditors.

15 Q And what was the board's view in reaction to that?

16 A We disputed it. And the reason we disputed it was very
17 straightforward. Save for the Redeemer claim, which at least
18 had an arbitration award, Acis and Mr. Terry didn't have any
19 specific awards, notwithstanding the results of the Acis
20 bankruptcy, and UBS, while it had a judgment, that judgment
21 was not against the Debtor.

22 So our view was, until we have our hands around these
23 claims and we determine what the validity is in our estate,
24 that we would treat the Debtor as if it were solvent. We also
25 wanted to assess the value of the assets. So, looking at the

001568

Seery - Direct

82

1 assets not just from a book value but what they might be
2 really worth in the market.

3 Q And did the board in the early portion of the case
4 consider all strategic alternatives?

5 A I don't know if we considered every strategic alternative,
6 but we certainly considered a lot of alternatives.

7 Q Can you describe for the Court the alternatives that were
8 considered by the board before settling on the asset
9 monetization plan?

10 A Well, early on, you know, we looked at each of the -- what
11 we would think of the large category types of ways to resolve
12 a case. Number one, could we go through a very traditional
13 reorganization with either stretching out claims to creditors
14 after settlement or converting some of those to equity,
15 getting new equity infusions? We considered those
16 alternatives.

17 Number two, we considered whether we should simply sell
18 the assets. That's one of the things that the Committee was
19 pushing for. They could be sold to third parties. They could
20 be sold individually. Mr. Dondero potentially could buy some
21 of the assets. That'd be a reasonable reorganization in this
22 case.

23 We also considered whether that, you know, we would just
24 do a straight liquidation. Is there some value to doing --
25 converting the case to a 7 and doing a straight liquidation?

001569

1 We also considered a grand bargain plan, and this was
2 something that I worked on quite a bit. The phrase is mine,
3 although no pride of authorship, certainly, since it didn't
4 work out. But that perhaps we could come to an agreement with
5 the major creditors and with Mr. Dondero and then shift some
6 of the expenses in the case out further to litigate some of
7 the other claims while reorganizing around the base business.

8 And then, finally, we considered the asset monetization
9 plan, and ultimately that evolved into what we have today.

10 Q Were there guiding principles or factors that the board
11 was focused on as it assessed these different options?

12 A Well, the number one guiding principle was overall
13 fairness and equitable treatment of the various stakeholders.
14 So, again, at that point, we didn't know exactly what, if
15 anything, we would owe to claimants like UBS or HarbourVest or
16 even Mr. Terry and Acis. We had a good sense of where we
17 would end up with Redeemer, I think, but we still had some
18 options and wanted to negotiate the issues related to
19 potential appeal rights that we had. So I think that was the
20 number one overall concern.

21 But that did evolve over time. Costs of the case were
22 exceptionally high. And the reason they're so high is that
23 Highland was run for a long time, at least from what we can
24 tell, at an operating deficit. Typically, what it would do is
25 run at a deficit and then sell assets to cover the shortfall,

Seery - Direct

84

1 and it would defer a whole bunch of employee -- potential
2 employee compensation. And because of the way the environment
3 was going, particularly in the first half of the year, it
4 didn't look to us like there was going to be any great asset
5 increase that would somehow save us from the hole that was
6 being dug, the considerable amount of expenses to run the
7 case.

8 Q Did changing the culture of litigation factor into the
9 path that the board considered?

10 A Well, we certainly looked at the way the company had run
11 and why it got to where it is in terms of litigating. And not
12 just litigating valid claims, but litigating any claim to the
13 *nth* degree. And stories are legion, I won't talk about them,
14 but of Highland taking outrageous positions and then pursuing
15 them, hoping that the other side caves.

16 We determined that this estate couldn't bear that kind of
17 expense, and it wasn't fair and equitable to do that anyway.
18 So we wanted to attack the claims that we could -- and I say
19 attack; try to resolve them as swiftly as we could --
20 protecting the Debtor's interests but trying to find an
21 equitable resolution.

22 I'm not averse to litigating. And I think when there are
23 claims that are legitimate, the Debtor should pursue them.
24 There's always -- a good settlement is always better than a
25 bad litigation. But if there (indecipherable) to resolve

001571

Seery - Direct

85

1 them, we should -- we should pursue those. And if we have
2 defenses, we should pursue those, and not just be held up
3 because someone else is willing to, you know, take a more
4 difficult position than we are.

5 But in this case, it really did cry out for some sort of
6 resolution on many of these cases because they were far beyond
7 -- far beyond the facts and far beyond the dollars. There was
8 personal antipathy involved in virtually every one of the
9 unlitigated or unliquidated Committee cases.

10 Q Did the board, as it was assessing the various strategic
11 alternatives, consider maximization of the value?

12 A Always number one was, can we maximize value? But that
13 has to be done within the context of the risk you're taking
14 and the time it takes. So, not all wine ages well in a cave
15 and not all investments get to be more valuable over time. We
16 wanted to look at each individual asset that the Debtor had,
17 each claim that the Debtor had, each defense that the Debtor
18 had, and consider the time and the costs and then try to find
19 the best way to maximize value with those multiple
20 considerations.

21 Q How about the role and support of the UCC, how did that
22 factor into the decision-making, the Debtor's decision-making
23 as to what plan to pursue?

24 A Well, you know, the decision-making with the UCC was
25 cumbersome and oftentimes difficult. Sometimes our relations

001572

Seery - Direct

86

1 were very contentious, and sometimes they continue to be. But
2 the Committee had significant oversight because of the
3 protocols that had been agreed to. Some of the disputes we
4 had with the Committee found their way into the court. Those
5 time and that cost, some of which we won, some of which we
6 lost, but those factored into our analysis.

7 But eventually we knew that we were going to need to get,
8 you know, some significant portion of the Committee to agree,
9 because, at minimum, Meta-e had a liquidated claim, and
10 Redeemer was very close to fully liquidated, so we were going
11 to need support from the Committee with whatever we tried to
12 push through. And so that's how we negotiated with the
13 Committee from that perspective.

14 Q Is it fair to say that the Debtor and the Committee's
15 interests became aligned upon approval of the disclosure
16 statement back at the end of November?

17 A I don't think they became perfectly aligned, because we
18 still have, you know, some disputes around, you know,
19 implementation and things like the employee releases, which
20 were very important to me. But I think we're largely aligned
21 and that the Committee is supportive, as Mr. Clemente said at
22 the start of this hearing, of the plan. We negotiated at
23 arm's length with them about most of the provisions. I would
24 say virtually everything was a relatively significant
25 negotiation, or at least there was a good faith exchange of

001573

Seery - Direct

87

1 views on each side and assessment of legal and financial
2 risks. And I think at this point they're largely in support
3 of the plan.

4 Q All right. Let's -- you mentioned the grand bargain, and
5 I just want to spend a few minutes talking about that, how
6 that evolved. Focusing your attention in the kind of late
7 spring/early summer, can you tell me what efforts you and the
8 board made in trying to achieve a grand bargain in that early
9 part of the case?

10 A Well, we had -- at that point, we had reached agreement,
11 at least in principle, with Redeemer. And the thought was --
12 my thought was that we could construct a plan, understanding
13 what the cash flows looked like and what we thought the base
14 value of the asset looked like -- and those are not just the
15 assets that are tangible assets, but the notes that are
16 collectible by the Debtor as well -- and then engage with UBS
17 in particular. Redeemer. To some degree, Mr. Terry. We had
18 not yet reached any agreement with him. But UBS, we thought
19 of as a slightly -- I don't mean this to be disparaging -- but
20 a slightly more commercial player than Acis because of the
21 history that Acis had to deal with and endure.

22 And we were hoping that we could get some sort of
23 coalescence around an agreed distribution that would require
24 those creditors to take a lot less than they might have
25 otherwise agreed, Mr. Dondero to put in more than he otherwise

001574

Seery - Direct

88

1 thought he could put in or would be willing to put in, and
2 then we would get out to Acis and the other creditors with a
3 plan.

4 And so I built, with the team at DSI, a detailed model on
5 how the distributions could work and what the potential timing
6 could be, trying to, each time, move in a multidimensional way
7 with UBS, Redeemer, Mr. Dondero, and to some degree Acis,
8 around the respective issues for their claims.

9 Again, UBS and Acis had not been resolved and weren't
10 close, but the thought was if we could get dollar agreements
11 for distribution, perhaps we could then figure out how to
12 construct settlements of their claims.

13 Q During this time period, did you work directly with Mr.
14 Dondero in the formulation of a potential grand bargain?

15 A I did, yes.

16 Q And the model that you described, did that go through a
17 number of iterations?

18 A It went through multiple iterations. I don't believe I
19 ever shared the model with anybody. One of the reasons for
20 that is I didn't want -- I felt I had -- if I was going to
21 share it with Mr. Dondero, for example, I'd have to share it
22 with UBS and I'd have to share it with Redeemer. And I wanted
23 it to be -- I wanted it to be a working model with the team at
24 DSI. In particular, we would make, you know, adjustments on
25 an almost-daily basis.

001575

Seery - Direct

89

1 Mr. Dondero had -- remember, he was still portfolio
2 manager at that time. He also had a related-party interest,
3 as people have seen from some of the litigation around the
4 sales of securities. He had access and was receiving emails
5 from the team as well as from the finance team. So he had
6 access to the information at that point and had a view around
7 the value. And this was more trying to adjust what those
8 distributions would look like depending on the amounts that he
9 would be willing to contribute.

10 Q Moving on in time, did there come a time when the Debtor
11 participated in a mediation with certain of the major
12 constituents in the case?

13 A Yes. That was towards the end of the summer.

14 Q And during that mediation, did the concept of a grand
15 bargain, was that put on the table? Without discussing any
16 particulars about it, just as a matter of process, was the
17 grand bargain subject to the mediation discussions?

18 A Well, the mediation had multiple components, so the answer
19 to the question in short is yes, but I'll go longer because I
20 tend to. The grand bargain plan stayed in place, and that was
21 going to be an overall settlement. The mediation was
22 initially, I think, as a main course, focused on Acis, UBS,
23 and then the third piece being the grand bargain. And if you
24 could settle one of those claims, perhaps -- obviously, if you
25 could settle both of them, you could get to then focusing on

001576

Seery - Direct

90

1 the grand bargain.

2 But even before we got to mediation, the idea of the
3 monetization plan had also been put forth. Notwithstanding
4 that it wasn't my idea, I actually thought that it was a good
5 idea, ultimately. Didn't initially. And the reason for that
6 is that it set a marker for what a base expectation could be
7 for the creditors and just for Mr. Dondero. And knowing that
8 that was out there, at least with them, that could hopefully
9 be a catalyst in the mediation for folks to say, let's see if
10 we can get our claims done and get a grand bargain done,
11 because if we don't we have this Debtor monetization plan.
12 And by that -- at that point, I don't think we had much
13 agreement with the Committee on anything, and certainly with
14 Mr. Dondero, on -- on a monetization plan.

15 Q All right. And let's just bring it forward from the fall,
16 post-mediation, to the present. Has -- has -- have you and
17 the board continued discussing with Mr. Dondero the
18 possibility of a grand bargain?

19 A Well, it's shifted. So, the grand bargain discussions
20 really -- you had multiple phases. So, you had pre-mediation.
21 There was the grand bargain discussions that I just described
22 previously that also involved UBS and Redeemer, and to some
23 degree Acis and Mr. Terry. Then you have the mediation, which
24 is much more focused on the claims and whether they can fit
25 into the grand bargain with Mr. Dondero.

001577

Seery - Direct

91

1 And the way that was conducted was a little bit more
2 separated, meaning the parties would talk to the mediator, the
3 mediator would then go and talk to other parties and try to
4 work a settlement on each of those components.

5 Subsequent to the mediation where we reached the agreement
6 with Acis and Mr. Terry, and we ultimately in that timeframe
7 banged out the final terms of our agreement with Redeemer, we
8 engaged with Mr. Dondero around -- I wouldn't call it the
9 grand bargain, but a different plan. By that point, the
10 monetization plan had started to gain some traction with the
11 creditor group, and Mr. Dondero and his counsel, I believe,
12 focused on the potential of what was referred to as a pot
13 plan. And while it has the -- it could have the ability of
14 being a resolution plan, it wasn't the grand bargain plan that
15 I had initially envisioned. And pot plan was really a
16 misnomer, because it didn't have a whole pot, so -- so it's a
17 little bit of a hybrid.

18 Q Did the board spend time during its meetings discussing
19 various pot plan proposals that had been put forth by Mr.
20 Dondero?

21 A Oh, absolutely. And not only the board. I mean, we did
22 our own work as an independent board and then brought in our
23 professional advisors, both your firm and the DSI folks, to go
24 through analytics around the pot plan, and even before that,
25 the other plan alternatives, but we had direct discussions

001578

Seery - Direct

92

1 with Mr. Dondero and his counsel.

2 Q And in the last couple of months, has the board listened
3 to presentations that were made by Mr. Dondero and his counsel
4 concerning various forms of the pot plan?

5 A Yes. At least two or three.

6 Q And during this time, has the board and the Debtor
7 communicated with the Committee concerning different
8 iterations of the proposed pot plan?

9 A Yes. We've had continual discussions with the Committee
10 regarding the various iterations of the potential grand
11 bargain all the way through the pot plan.

12 Q And during this process, did the Debtor provide Mr.
13 Dondero and his counsel with certain financial information
14 that had been requested?

15 A Yes. As I said, up 'til the point where he resigned and
16 was then ultimately, at the end of the year, removed from the
17 office, he had access to financial information related to the
18 Debtor and even got the information from the financial group.
19 Subsequent to that, we've provided him with requests -- with
20 financial information that was requested by his counsel.

21 Q Okay. Were your efforts at the grand bargain or the
22 pursuit of the pot plan successful?

23 A No, they were not.

24 Q Do you have an understanding as to -- just, again, without
25 going into -- into details about any particular proposal, do

001579

Seery - Direct

93

1 you have an understanding as to what the barrier was to
2 success?

3 A The grand bargain, we just never got the traction that we
4 needed to get that going and the sides were just far -- too
5 far apart. And the pot plan, similarly. Our discussions with
6 Mr. Dondero and the Committee, they're -- they're very far
7 apart.

8 Q And is it fair to say that the Committee's lack of support
9 in either the grand bargain or the pot plan is the principal
10 cause as to why we're not talking about that today?

11 A Well, it's -- it -- right now, we've got the plan that's
12 on file, the monetization plan. The monetization plan has
13 gone out for creditor vote and has received support. It
14 distributes, we think, equitably, as well as a significant
15 amount of distributions to unsecured creditors. And there
16 really isn't an alternative that we see, based upon the
17 numbers I've seen, that competes with it or has any traction
18 with the largest creditors.

19 Q All right. So, now we've talked about various proposals
20 or alternatives that were considered by the board, including
21 the grand bargain and the pot plan. Let's spend some time
22 talking about the plan that is before the Court today and how
23 we got here. And I'd like to take you really back to the
24 beginning, if I may.

25 Tell us, tell the Court just what the board was doing in

001580

Seery - Direct

94

1 the early months after getting appointed, because I think
2 context is important here. What were you all doing the first
3 few months of the case?

4 A Well, the first few months, we really were drinking from
5 the proverbial fire hose, trying to get an understanding of
6 the business, how it had been managed previously, what the
7 issues related to the different parts of the business were.
8 And then an understanding of each of the employees that were
9 working under us, what their roles were, how they performed
10 them, who sat where with respect to each of the assets, what
11 the contracts looked like, whether they be shared service or
12 management agreements. And then we started looking at the
13 individual assets in terms of value.

14 At the same time, we were trying to get up to speed on the
15 complex nature of the claims that were in the case. The
16 liquidated claims were relatively easy, but there had been a
17 significant amount of transfers in and out of the Debtor, and
18 then there's a myriad of relationships involving related
19 entities that we had to understand, both with respect to the
20 claims as well as with respect to the assets.

21 And so that -- those were the main things we were doing
22 for those first few months in the case.

23 Q Just a couple months into the case, the COVID pandemic
24 reared its head. Do you recall that?

25 A Yes. We had been in Dallas every day working up 'til the

001581

Seery - Direct

95

1 time of the COVID and some of the shutdown orders,
2 particularly in the Northeast, and so that changed the dynamic
3 of how we could function every day.

4 Notwithstanding that, we -- we were able to manage from
5 afar, and ultimately, when there were some cases in the office
6 of COVID, we -- on the Highland side, not the related entity
7 side, but on the Highland side -- we determined that the staff
8 and the team should work from home, which they were able to do
9 quite well.

10 Q Okay. In those early months, do you recall that there was
11 a substantial erosion of value, at least as of the time you
12 were appointed in those first three or four months?

13 A There was. And I think we've heard some -- some noise
14 about what that value was and the drop in the asset value as
15 opposed to net value. But the asset value did, did drop
16 significantly.

17 Q Can you describe for the Court your recollection as to the
18 causes of the drop in the value that you just described?

19 A Yes. The number one drop was a reservation that the board
20 took for a receivable from an entity called Hunter Mountain.
21 The quick version of this is that Hunter Mountain owns
22 Highland. As I mentioned, while Strand is the GP, it only has
23 a quarter-percent interest in Highland. The vast majority of
24 the interests are owned by an entity called the Hunter
25 Mountain Investment Trust in a very complicated, tax-driven

001582

Seery - Direct

96

1 structure.

2 Dondero and Okada transferred their interests in Highland
3 at a high valuation to Hunter Mountain. Hunter Mountain then
4 didn't have the money, so it, in essence, borrowed the money
5 from the Debtor in a note to pay for those interests. There's
6 a circular running of the cash, but we were not sure where, if
7 any, where any assets are, if they would be sufficient. So we
8 took a reservation of \$58 million for that note.

9 The second biggest piece of the reduction in value was the
10 equity that was lost in the Select Equity account. This is a
11 Debtor trading account that was managed by Mr. Dondero. \$54
12 million was lost in that account. Basically, it was really
13 highly margined, very high leverage in that account when the
14 market volatility came in. As it grew through January,
15 February, March, more and more margin calls. Ultimately,
16 Jefferies, which had Safe Harbor protections -- technically,
17 the account was not a Debtor account, but they would have had
18 it anyway -- they seized that account. \$54 million in equity
19 was lost in that account.

20 The next highest amount is about \$35 million, but it's
21 higher now. That's just the bankruptcy costs, where we have
22 spent cash and Debtor assets in the case. It was about \$36 to
23 \$40 million through the end of the year. That's now higher.

24 About \$30 million was lost in paying back Jefferies on the
25 asset side of the ledger in the Highland internal equity

001583

Seery - Direct

97

1 account. This was similar to the equity -- the Select Equity
2 account, also managed by Mr. Dondero. Extremely highly-
3 levered coming into the market volatility of the first
4 quarter, which was exacerbated, obviously, by the COVID. That
5 was about \$30 million that was repaid in margin loan in that
6 account.

7 In addition, \$25 million of equity was lost in that
8 account while Mr. Dondero was managing it. I took over
9 effectively managing it in mid-March and worked with Jefferies
10 to keep them from seizing the account. We've since gotten a
11 bunch of value coming back from that account, but that was the
12 amount that was lost.

13 About \$10 million was lost in the Carey Limousine loan
14 transaction. That is a -- an interesting little company. Has
15 done a nice job -- management did a very good job coming into
16 the year, and it actually had real value, notwithstanding the
17 changeover to Uber in people's preferences. But with the
18 COVID, it really relied on events, airport travel, executive
19 travel, and that really took a bite out of it, although, you
20 know, we're hoping to be able to restructure, we have
21 restructured it to some degree, and we're hoping that there
22 could be value there.

23 And then about \$7 million was lost in equity in an entity
24 called NexPoint Hospitality Trust. This is another extremely
25 highly-levered hospitality REIT that NexPoint manages. It

001584

Seery - Direct

98

1 trades on the Toronto Stock Exchange. And I think likely that
2 -- it's got a lot of issues with respect to its mortgage debt.
3 And because it was hospitality, it was really hurt by the
4 COVID.

5 And I think that's probably -- those numbers add up to
6 north of \$200 million of the loss.

7 Q All right. Thank you for that recitation, Mr. Seery. So,
8 turning to the spring, after all of those issues were
9 addressed, at the same time you were working on the grand
10 bargain, did the Debtor and its professionals begin
11 formulating the monetization plan that we have today?

12 A I'm sorry, in the spring? I lost that question. I
13 apologize.

14 Q That's okay. After you dealt with everything that you
15 just described, were you doing two things at once? Were you
16 working on the grand bargain and the asset monetization plan
17 at the same time?

18 A Yes, that's correct.

19 Q All right. Can you just describe for the Court kind of,
20 you know, how the asset monetization plan evolved up until the
21 point of the mediation?

22 A Yes. I alluded to it earlier, but because the Debtor was
23 running an operating deficit, we were very concerned about
24 liquidity. Highland typically runs, from a liquidity
25 perspective and a cash perspective, very close to the edge. I

001585

Seery - Direct

99

1 don't feel particularly comfortable helping lead an
2 organization that's running that close to the edge. And I was
3 very focused on the burn that we had on an operating basis, as
4 well as the professional cost burn, because for a case this
5 size it was significant.

6 The rest of the board felt similarly, and one of the
7 directors, and I'm not sure if it was Mr. Nelms or Mr. Dubel,
8 came up with the idea that we needed an alternative to
9 continuing to just burn assets while we were in this case.
10 There had to be some sort of catalyst to get the parties, both
11 Mr. Dondero as well as the creditors -- at that point, as I
12 said, we weren't settled with Acis or UBS, and we weren't,
13 frankly, close with either of them. And so we needed what --
14 what I think the -- the idea was that we needed a catalyst to
15 have people focus on what the alternative was. Because
16 continuing to run the case until we ran out of money was not
17 an acceptable alternative.

18 What I didn't like about the plan was it didn't have
19 anybody's support, and so I wasn't sure how we made progress
20 with it without having some Committee member or Mr. Dondero in
21 support of it. I was outvoted, although maybe I came around
22 in the actual vote. But ultimately, I think it was actually a
23 quite smart idea, because it did set the basis for what the
24 case would be. Either there would be some resolution or it
25 would push towards the monetization plan, and parties could

001586

Seery - Direct

100

1 then assess whether they liked the monetization plan or not.

2 That if I was going to be the Claimant Trustee or the --

3 defending the, you know, against the claims, they would have

4 the pleasure of litigating with me for some period of time.

5 Or they could come to some either grand bargain or ultimately

6 some other resolution.

7 And as we started to develop a plan and put more of a

8 framework -- more flesh around the framework, it actually

9 started to look more and more like a real viable alternative

10 to either long-term litigation or some other grand bargain if

11 we couldn't get there.

12 Q And ultimately, did the board authorize the Debtor to file

13 its initial version of the asset monetization plan at around

14 the time of the mediation?

15 A Yeah. We developed it over the summer and really fleshed

16 it out in terms of how the structure would work, what the tax

17 issues were, what the governance issues were. We did that

18 largely negotiating with ourselves, so we -- we were extremely

19 successful. And then we filed, we filed that plan right

20 before the mediation.

21 And my recollection is that there was some concern from

22 the mediators that they thought that putting that plan out in

23 the public could upset the possibility of a grand bargain, so

24 we ended up filing that under seal.

25 Q Do you recall what the Committee's initial reaction was to

001587

Seery - Direct

101

1 the asset monetization plan that you filed under seal?

2 A Well, initially, they -- the Committee didn't like it.
3 They didn't like the governance. They didn't like the fact
4 that it set up for those creditors who didn't litigate the
5 prospect of litigations to try to resolve their claims. It
6 effectively cut out some of the advisory that the Committee
7 currently had. The -- one of the driving forces behind the
8 asset monetization plan and how we initially started it is we
9 can't continue these costs, as I said. Well, an easy way to
10 get rid of -- to reduce the costs is to get rid of half of
11 them.

12 So if you could get rid of the Committee, effectively, and
13 coalesce around an asset monetization vehicle, then if folks
14 wanted to resolve their claim, you could. If you had to
15 litigate it, you could, but you'd have one set of lawyers that
16 the estate was paying for, one set of financial advisors the
17 estate was paying for, as opposed to multiple sets.

18 Q In addition to the corporate governance issues that you
19 just described, did the Committee and the Debtor quickly reach
20 an agreement on the terms of the treatment of employee claims
21 and the scope of the releases for the employees?

22 A No. Not very quickly at all.

23 Q Yeah.

24 A You know, again, one of the issues in this case that
25 drives perspectives is the history that creditors have in

001588

Seery - Direct

102

1 dealing with Highland and in dealing with many of the
2 employees at Highland, you know, who had worked for Mr.
3 Dondero and served at his pleasure for a long time, and how
4 they had been treated in various of their attempts to collect
5 their claims. So the idea of giving any sort of releases to
6 the employees was anathema to -- to many of the Committee
7 members.

8 From my perspective, you know, releases are particularly
9 important because there's a *quid pro quo* leading up to the
10 confirmation of a plan, particularly with a monetization plan
11 where it's clear that the employees are all going to be or
12 largely going to be either transitioned or terminated. If
13 they're going to keep working towards that, we either have to
14 have some sort of financial incentive or some sort of
15 assurance that their actions which are done in good faith to
16 try to pursue this give them the benefit of more than just
17 their paycheck.

18 And so we thought we were setting up the *quid pro quo* in
19 terms of work towards the monetization, bring the case home,
20 and you're entitled to a release, so long as you haven't done
21 something that was grossly negligent or willful misconduct.
22 And the Committee, I think, wanted to have a more aggressive
23 posture.

24 Q And did those disagreements over corporate governance and
25 the employee releases kind of spill out into the public at

001589

Seery - Direct

103

1 that disclosure statement hearing in October?

2 A I think they spilled out at that hearing as well as in the
3 hearing either the next day or two days later around Mr.
4 Daugherty's claim. And again, it was -- it was contentious.
5 I tend to try to reach resolution, but I tend to hold firm
6 when I think that there's a good reason, an equitable reason
7 to do so, and compromising that issue was very difficult for
8 me.

9 Q But in the weeks that followed, did the Committee and the
10 Debtor indeed negotiate to resolve to their mutual
11 satisfaction the issues surrounding corporate governance and
12 employee releases?

13 A We did, yes.

14 Q And were -- was the Debtor able to get its disclosure
15 statement approved with Committee support in late November?

16 A We did, yes.

17 Q Can you describe for the Court generally kind of the
18 process by which the Debtor negotiated with the Committee?
19 I'll ask it as broadly as I can, and I'll focus if I need to.

20 A Yeah. The process was usually in group settings with the
21 independent directors, professionals, and the Committee
22 members and their professionals. Oftentimes, then, there
23 would be certain one-off conversations if there was a
24 particular issue that was more important to one Committee
25 member or another, or if they were designated by the Committee

001590

1 to be the point on that. And so I negotiated on behalf of the
2 Debtor, both collectively and individually, around these
3 points.

4 The biggest issues related to governance of the Claimant
5 Trust, the separation of the Claimant Trust and the Litigation
6 Trust, which was important to me, the treatment of employees
7 between the filing -- the time we came up with the case and
8 when we were going to exit, and then how that release
9 provision would work.

10 Q Is it fair to say that numerous iterations of the various
11 documents that embodied the plan were exchanged between the
12 Debtor and the Committee?

13 A Yes. There were -- there were dozens.

14 Q Fair to say that the negotiations were arm's length?

15 A Absolutely. Often contentious, always professional, but I
16 do think that there were, you know, well -- good-faith views
17 held by folks on both sides. And I think we were fortunate to
18 be able to get resolution of those, because they were
19 strongly-held views.

20 Q Okay. And ultimately, I think you've already testified,
21 and Mr. Clemente certainly made it clear: Is the Debtor --
22 does the Debtor have the Committee on board for their plan
23 today?

24 A My understanding is again -- and you heard Mr. Clemente --
25 both the Committee and each of the individual members are

Seery - Direct

105

1 supportive of the plan.

2 Q All right. Let's switch to Mr. Dondero and his reaction
3 to the asset monetization plan. Can you describe for the
4 Court based on your experience and your interaction with him
5 what you interpreted Mr. Dondero's position to be?

6 A VOICE: Objection, hearsay, or --

7 MR. DRAPER: Objection, hearsay. Calls for
8 speculation, Your Honor.

9 THE COURT: Overruled.

10 THE WITNESS: Yeah. I had direct discussions with
11 Mr. Dondero regarding the plan, the asset monetization plan,
12 as I mentioned, direct discussions regarding a potential grand
13 bargain. The initial view from Mr. Dondero was, and he told
14 me, that if he didn't get a plan that he agreed to, if he
15 didn't have a specific control or agreement around what got
16 paid to Acis and Mr. Terry and what got paid to Redeemer
17 specifically, that he would, quote, burn the place down. I
18 know that because it is, excuse the pun, seared into my mind,
19 but I also wrote it down. And that was, you know, in the
20 early summer.

21 We had subsequent discussions around the plan, and as we
22 were talking about the -- about the grand bargain or -- the
23 pot plan hadn't come out at that point -- even on a large call
24 -- the plan initially called for a transition, and still does,
25 of employees of the Debtor to a related entity to continue

001592

Seery - Direct

106

1 performing services that were under the prior shared service
2 agreements that we were going to terminate.

3 But that transition is wholly dependent on Mr. Dondero.
4 And we had a call with at least five to seven people on it
5 where I said to Mr. Dondero, look, this is going to be in your
6 financial interest to agree to a smooth transition. These
7 people have worked for you for a long time. It's for their
8 benefit. You portfolio-manage these funds. It's to the
9 benefit of those funds to do this smoothly. And if there's
10 litigation between you and the estate later, then those chips
11 will fall where they may.

12 And he told me to be prepared for a much more difficult
13 transition than I envisioned.

14 And I specifically said to him, and this one sticks in my
15 mind because I recall it, I said, don't worry, Mr. Dondero --
16 I think I used Jim -- I will be prepared. I was a Boy Scout
17 and we spend time preparing for these kinds of things. So
18 we're -- we would love to get done the best transition we can,
19 but we will be prepared for a difficult one.

20 So, from the start, the idea of the monetization plan was
21 not something that obviously he supported. We did agree with
22 -- after his inquiry or request with the mediators, to file it
23 under seal while we went into the mediation.

24 BY MR. MORRIS:

25 Q And after, after that was filed in September, early

001593

Seery - Direct

107

1 October, did Mr. Dondero start to act in a way that the board
2 perceived to be against the Debtor's interests?

3 A Certainly. I mean, he previously had shown inclinations
4 of that, but that -- it got very aggressive as he interfered
5 with the trades we were trying to do in terms of managing the
6 CLO assets. He took a position that postpetition, which was
7 really one of his entities taking a position, that
8 postposition a sale of life policy assets was somehow not in
9 the best interests of the funds and that we had abused our
10 position, notwithstanding that he turned it over to us with no
11 liquidity to maintain those life policies. There were several
12 other instances. And those led to the decision to, one, have
13 him resign, and then ultimately, after the text to me that I
14 perceived as threatening, and we've had subsequent hearings on
15 it, we asked him to leave the office.

16 Q Okay. Let's move back to the plan here. Can you
17 describe, you know, generally, if you can, the purpose and
18 intent of the asset monetization plan?

19 A Well, very simply, the main purpose is to maximize value.
20 This is not a competition between Mr. Dondero and myself. I
21 have no stake in getting more money out of the maximization
22 other than my duty to do the job that I was hired to do.

23 So our goal is to manage the assets in what we think is
24 the best way to do that over time, and find opportunities
25 where the market is right to monetize the assets, primarily

001594

Seery - Direct

108

1 through sales. There may be other instances, depending on the
2 type of asset, whether a sale makes sense, if we can structure
3 it through some kind of distribution that's more structured.

4 Q We've used the phrase a bunch of times already. Can you
5 describe in your own words what an asset monetization plan is
6 in the context of the Debtor's proposal?

7 A Well, it may be slightly an awkward moniker, but I think
8 it's not completely different than what you'd see, in some
9 respects, to a regular plan, where you equitize debt and you
10 operate the business for the benefit of the equitized debt.
11 Here, it's a little different in that we know exactly how
12 we're going to move forward. We've effectively -- we'll
13 effectively turn the debt obligations into trust interests and
14 we will pay those as we sell down assets. So we've got it
15 structured in a way where we can pivot depending on market
16 conditions and we'll be managing certain funds that the assets
17 sit in.

18 So there's really four assets where the assets sit, and
19 we'll manage those. First are the ones that the Debtor owns
20 directly. Second will be the ones that are in Restoration
21 Capital -- Restoration Capital Partners. Third are the assets
22 in a fund called Multi-Strat. Fourth is the direct ownership
23 interest in Cornerstone, and technically (garbled) would be
24 the -- would be the next one.

25 So we have the ability to manage these individual assets

001595

Seery - Direct

109

1 and then be able to sell them in what we determine to be the
2 best way to maximize value, depending on the timing.

3 Q And when you say that you're going to continue to operate
4 the business, do you mean that the Debtor will continue to
5 manage the assets you've just described in the same way that
6 it had prior to the petition date?

7 A It'll be a smaller team, but that's the Debtor's business.
8 So what we won't be doing are the shared services anymore.
9 That was part of the Debtor's business. But we will be
10 managing the assets. So the 1.0 CLOs, we'll manage those
11 assets. The RCP assets, we'll manage those assets. The
12 Trussway Holdings assets, we'll managing those assets. Each
13 of them is a little bit different. There's things as diverse
14 as operating companies to real estate. We'll operate, subject
15 to final agreement, but the Longhorn A and B, which are
16 separate accounts that are -- were funded and are controlled
17 by the largest -- one of the largest investors in the world.
18 And so they have agreed that we should manage those assets for
19 them.

20 So we're -- that's the business that the Debtor is in. It
21 won't be doing all of the businesses that the Debtor was in
22 before, like the shared services, but the management of the
23 assets will be very similar.

24 Q And why do these funds and these assets need continued
25 management? Why aren't you just selling them?

001596

Seery - Direct

110

1 A Well, in some respects, they could just be sold, but the
2 -- we believe that the value would be a lot lower. So, a lot
3 of them are complex. The time to sell them may not be now.
4 Some will require restructuring in some way, whether -- not
5 through a reorganization process, but some sort of structural
6 treatment to how the obligations at the individual asset are
7 treated, or the equity at the individual asset. So we're
8 going to manage each of them and look for market opportunities
9 where we think the value can be maximized.

10 MR. MORRIS: Your Honor, I'm about to switch to
11 another topic. We have been going for a little bit more than
12 two and a half hours. I'm happy to just continue if you and
13 the witness are, but I just wanted to give you a head's up
14 that I'm about to switch topics. If you wanted to take a
15 short break, we could. If you want me to continue, I'm happy
16 to do that, too.

17 THE COURT: Well, let me ask you, how much longer do
18 you think you're going to take overall with Mr. Seery?

19 MR. MORRIS: I think I'll probably have another hour
20 to an hour and a half, Your Honor. We want to make a complete
21 factual record here.

22 THE COURT: All right. Well, it's 12:07 Central
23 time. Why don't we take a 30-minute lunch break, okay? Can
24 everybody do their lunch snack that fast?

25 MR. MORRIS: Sure.

001597

Seery - Direct

111

1 THE COURT: I think that would probably be the way to
2 go. So we'll come back -- it's now 12:08. We'll come back at
3 12:38 Central time and resume --

4 MR. MORRIS: Okay.

5 THE COURT: -- resume this direct testimony, okay?
6 So, see you in 30 minutes.

7 MR. MORRIS: Thank you very much.

8 THE COURT: Okay.

9 THE CLERK: All rise.

10 (A recess ensued from 12:08 p.m. to 12:44 p.m.)

11 THE COURT: We are going back on the record in the
12 Highland confirmation hearing. It's 12:44 Central time. I
13 took a little bit longer break than I said we would.

14 Mr. Morris and Mr. Seery, are you ready to resume?

15 MR. MORRIS: I am, Your Honor.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Okay, good. A couple of things. I'm
18 required to remind you you're still under oath, Mr. Seery.
19 And also, just for people's planning purposes, what I intend
20 to do is, when the direct examination of Mr. Seery is
21 finished, I'm going to allow cross-examination of the
22 Objectors in the same amount of time in the aggregate that the
23 Debtor got, okay? So, Objectors, in the aggregate, you can
24 spend as long cross-examining as the Debtor spent examining.
25 I can figure out this is the most significant witness, so I'm

001598

Seery - Direct

112

1 assuming that Debtor's other witnesses are going to be a lot
2 shorter than this, but --

3 MR. MORRIS: Yes, I promise.

4 THE COURT: -- that's how we'll proceed. And I
5 expect to finish Mr. Seery today.

6 So, all right. With that, you may proceed, Mr. Morris.

7 MR. MORRIS: Okay.

8 DIRECT EXAMINATION, RESUMED

9 BY MR. MORRIS:

10 Q Can you hear me okay, Mr. Seery?

11 A Yes, sir.

12 Q Okay. Before we move on to the next topic, you spent some
13 time describing the asset monetization plan. Would it be fair
14 to describe that as a long-term going-concern liquidation?

15 A Long-term is subjective. We anticipate that we'll be able
16 to monetize the assets in two years. We could go out longer
17 to three. There's no absolute restriction that we couldn't
18 take longer, depending on what we see in the market, but the
19 objective would be to find maximization opportunities within
20 that time period.

21 Q Okay. So let's turn now to the post-confirmation
22 corporate governance structure.

23 (Interruption.)

24 THE WITNESS: Mr. Golub (phonetic), you should mute.

25 THE COURT: Yes. I don't know -- I didn't catch who

001599

Seery - Direct

113

1 that was. But anyway, anyone other than --

2 A VOICE: It's someone named Garrett Golub.

3 THE COURT: -- Morris and Seery, please mute. All
4 right. Go ahead.

5 MR. MORRIS: Okay.

6 BY MR. MORRIS:

7 Q At a high level, Mr. Seery, can you please describe for
8 the Court the post-confirmation structure that's envisioned
9 under the proposed plan?

10 A At a high level, we anticipate reorganizing HCMLP such
11 that the current parties of interest will be extinguished and,
12 in exchange, creditors will get trust interests. There'll be
13 a trust that will sit on top of HCMLP and it will have an
14 overall responsibility for the Claimant Trust, which will be
15 the HCMLP assets plus the assets that we move into the
16 Claimant Trust, depending on structural considerations. And
17 then a Litigation Trust, which will be a separate trust, and
18 that will roll up into the main trust. And the main trust
19 will be where the creditors hold their interests. And those
20 interests take the form of senior interests or junior
21 interests.

22 Q All right. You mentioned a Claimant Trust. Who is
23 proposed to serve as the Claimant Trustee?

24 A I am.

25 Q And you mentioned a Litigation Trust. Is there someone

001600

Seery - Direct

114

1 proposed to serve as the Litigation Trustee?

2 A A gentleman named Marc Kirschner. He's been doing these
3 kinds of things for a long time.

4 Q Is there going to be any kind of oversight group or
5 committee?

6 A There is an oversight committee that sits at the main
7 trust. Into it will report Mr. Kirschner and myself. It has
8 oversight responsibilities similar to a board of directors in
9 terms of the operations of the Claimant Trust and the
10 Litigation Trust.

11 Q Do you have an understanding as to who the initial members
12 of the Claimant Oversight Committee?

13 A The initial members will be each of the members of the
14 Creditors' Committee. So, UBS, Acis, Redeemer, a
15 representative from Redeemer, and Meta-e, as well as an
16 independent named David Pauker. So that's the initial
17 structure.

18 Q And can you describe for the Court, how did Mr. Pauker get
19 involved in this?

20 A He was selected by the Committee.

21 Q Okay. Is there -- Meta-e is a convenience class claim
22 holder. Do I have that right?

23 A Yeah. They're -- they -- as I went through earlier, they
24 had a liquidated claim for litigation services. So we
25 expected that they'll be paid off rather early in the process.

001601

Seery - Direct

115

1 At that point, we suspect they wouldn't -- they would no
2 longer be an Oversight Committee member and they would be
3 replaced by an independent.

4 Q And do you have any understanding as to how that
5 independent will be chosen?

6 A I believe it's chosen by the other members.

7 Q Okay. Can you describe your proposed compensation
8 structure as the proposed Claimant Trustee?

9 A My compensation will be \$150,000 a month, which is the
10 same compensation I have now. In addition, we'll negotiate a
11 bonus structure with the Oversight Committee. And that will
12 likely be a bonus not just for myself but for the entire team,
13 depending on performance.

14 Q Okay. And that -- and who is that negotiation going to be
15 had with?

16 A The Oversight Committee.

17 Q Okay. Are you familiar with Mr. Pauker's compensation
18 structure?

19 A I -- I've seen it. I don't recall specifically. I think
20 his -- from the models, I think he's about 40 or 50 grand a
21 month, something along those lines.

22 Q Okay. How about Mr. Kirschner? Do you recall -- let me
23 just ask you this. Does it refresh your recollection at all
24 if I said that 250 in year one for Mr. Pauker?

25 A Yeah. So maybe closer to \$20,000 to \$25,000 a month. And

001602

Seery - Direct

116

1 then Mr. Kirschner is a lower amount, but he would get a
2 contingency fee arrangement somewhere dependent on the
3 recoveries from his litigations.

4 Q Okay. You mentioned earlier that the Debtor intends to
5 continue operations at least for some period of time post-
6 effective date. Do you have a view as to whether the post-
7 confirmation entity will have sufficient personnel to manage
8 the business?

9 A I do, yes.

10 Q And why is that? What makes you believe that the Debtor
11 will have -- the post-confirmation Debtor will have sufficient
12 personnel to manage the business?

13 A Well, we've gone through and looked at each of the assets
14 and what is required to manage those assets. We have a lot of
15 experience doing it during the case. The bulk of the
16 employees, who do a fine job, are really doing shared service
17 arrangements. The direct asset management group is a smaller
18 group, and we'll be able to manage those with the team we're
19 putting together.

20 Q Okay. How does the ten employees compare to the original
21 plan that was set forth in the disclosure statement, if you
22 recall?

23 A Well, we had less, and I believe the number was either two
24 or three, along with me, and then using a lot of outside
25 professional help. But we determined that we wanted to have a

001603

Seery - Direct

117

1 much more robust team, based on the litigation that we're
2 seeing around the case and we expect to continue post-exit, so
3 that the team can manage those assets unfettered.

4 In addition, we were taking on the CLO management, the 1.0
5 CLO contracts. These one -- as I've mentioned before, they're
6 not traditional CLOs in the sense that they require the same
7 hands-on management, but they do require an experienced team
8 to help manage the exposures, most of which are cross-holdings
9 in different -- in different entities or different investments
10 that Highland also has exposure to.

11 Q In addition to the assumption of the CLO management
12 agreements, has the Debtor made any decisions regarding the
13 possibility of hiring a sub-servicer?

14 A We have, yes.

15 Q And did that factor into the Debtor's decision to increase
16 the number of personnel it was going to retain?

17 A Well, we determined we weren't going to hire a sub-
18 servicer. And I'm not sure exactly when we made that
19 determination. We do have a TPA, which is SEI, and that's a
20 third-party administrator, to sift through the funds and
21 provide accounting supporting to those, to those funds. So
22 that -- they will help. We also have an outside consultant
23 that we're using, Experienced Advisory Consultants, who are
24 financial consultants who've worked in the business. So we do
25 have those.

001604

Seery - Direct

118

1 But we didn't think that we would get a third-party sub-
2 servicer, as was the case in Acis, and determined that wasn't
3 in the best interest of the estate.

4 Q Can you just shed a little light on what factors the
5 Debtor took into account in deciding not to hire a sub-
6 servicer?

7 A Well, we primarily looked at cost, as well as control of
8 the assets, and determined that that was -- those were in the
9 best interests of the estate, to keep them managed internally.
10 We reviewed that with the Committee, and they agreed.

11 Q Okay.

12 MR. MORRIS: Let's turn now to the best interests of
13 creditors' test, Your Honor, 1129(a)(7), and let's talk about
14 whether the plan is in the best interests of creditors.

15 BY MR. MORRIS:

16 Q Has the Debtor done any analysis to determine the likely
17 value to be realized in a Chapter 7 liquidation?

18 A We have, yes.

19 Q And has the Debtor done any analysis to determine the
20 likely recoveries under the plan?

21 A Yes.

22 Q Okay. Do you recall when these projections were first
23 prepared?

24 A We started working on projections in the fall, as we were
25 developing the monetization plan. We filed projections, I

001605

Seery - Direct

119

1 believe, in November. We've subsequently updated those
2 projections based on the claims, market condition, and value
3 of the assets.

4 Q And were those updates provided to plan objectors last
5 week?

6 A Yes, they were.

7 Q Okay. Can we refer to the projections that were in the
8 disclosure statement as the November projections?

9 A That'd be fine.

10 Q And can we refer to the projections that were provided to
11 the objectors last week as the January projections?

12 A Yes.

13 Q And as --

14 A I think they're actually -- I think they're actually dated
15 February 1, is the most recent update.

16 Q Okay. And then was a further update provided yesterday
17 and filed on the docket, to the best of your knowledge?

18 A Yes.

19 Q All right. We'll talk about some of the changes in those
20 projections.

21 MR. MORRIS: Can we call up on the screen Debtor's
22 Exhibit 7D as in dog? And this document is in evidence. Um,
23 --

24 THE COURT: No, this is -- oh, wait. How many Ds is
25 it? Seven?

001606

Seery - Direct

120

1 MR. MORRIS: It's 7D, so that would be on Docket
2 1866, all of which has been admitted.

3 THE COURT: Okay. You're right.

4 MR. MORRIS: Okay.

5 And if we could just, I'm sorry, go to Page 3.

6 BY MR. MORRIS:

7 Q Is there any way to look at this, Mr. Seery? Is this the
8 January projections that were provided last week?

9 A Yes.

10 Q Okay. Can you describe for the Court the process by which
11 this set of projections and the November projections were
12 prepared? How did the Debtor go about preparing these
13 projections?

14 A Yeah. These are prepared what I would call bottoms-up.
15 So what we did was we looked at each of the assets that the
16 Debtor owns or manages or has a direct or indirect interest
17 in, used the values that we have for those assets, because we
18 do keep valuations for each of the assets that the Debtor owns
19 or manages in the ordinary course of business. We then
20 adjusted those depending on what we saw as the outcomes for
21 the case, either a plan outcome or a liquidation outcome, and
22 then rolled those into the -- into the numbers that you see
23 here.

24 So the 257 and change. And please excuse my eyesight.
25 I'm going to make this bigger. The 257 is the estimated

001607

Seery - Direct

121

1 proceeds from monetization. Above that, you see cash. That's
2 our estimated cash at 131. And we monitor those, those values
3 daily.

4 Q And were these projections prepared under your
5 supervision?

6 A They were, yes.

7 Q Okay. And who was involved in the preparation of this
8 document and other iterations of the projections?

9 A The team at DSI. Obviously, myself; the team at DSI; as
10 well as the, at least from a review perspective, counsel.

11 Q All of these contain various assumptions. Do I have that
12 right?

13 A Yes.

14 MR. MORRIS: Can we go to the prior page, please, I
15 think is where the assumptions are? And let's just look at a
16 few of them. Okay. Can we make that a little bigger, La
17 Asia? Okay. Good.

18 BY MR. MORRIS:

19 Q Why does the Debtor's projections and liquidation analysis
20 contain any assumptions? Why, why include assumptions?

21 A Well, all projections contain assumptions. So an
22 assumption -- I was strangely asked the question at
23 deposition, what does that mean? It's a thing or fact that
24 one accepts as true for the purposes of analysis. And so in
25 terms of looking out into the future as to what the potential

001608

Seery - Direct

122

1 operation expenses will be and what the potential recoveries
2 will be, one has to make assumptions in order to be able to
3 compare apples to apples.

4 Q And do you believe that these assumptions are reasonable?

5 A Yes. It would make no sense to have assumptions that
6 aren't reasonable. I mean, and we've all seen that with
7 analysis through our respective careers. It really should be
8 grounded in some fact and a reasonable projection on what can
9 happen in the future, based upon experience.

10 Q Okay. And have you personally vetted each of the
11 assumptions on this page?

12 A Yes.

13 Q Okay. Let's just look at a few of them. Let's start with
14 B. It says, All investment assets are sold by December 31,
15 2022. Do you see that?

16 A Yes.

17 Q Why did the Debtor make that assumption?

18 A We looked at a two-year projection horizon. We thought
19 that that was a reasonable amount of time, looking at these
20 assets, to monetize the assets. Remember that we did go
21 through a process of the case over the last year, and we did
22 consider monetization asset events for certain of the assets
23 throughout the case, some of which we were successful on, some
24 of which we weren't, some we just determined to pull back.
25 But we do believe that, based upon our view of the market and

001609

Seery - Direct

123

1 where we think these assets will be positioned, that
2 monetizing them over a two-year period makes sense.

3 Q And is it possible that it takes longer than that?

4 A It's possible. The -- you know, we would be wrong about
5 the market. The -- we could go into a full-blown recession.
6 Capital could dry up. The financing markets could turn
7 negative. But they're extremely positive right now. Those
8 things could happen. But we're assuming that they won't.

9 Q And is it possible that you complete the process on a more
10 accelerated timeframe?

11 A That's always possible. It's not, in my experience, a
12 good way to plan. Luck really isn't a business strategy. But
13 if good opportunity shows up and folks want to pay full value
14 for an asset, we certainly wouldn't turn them away just so we
15 could stretch out the time period.

16 Q Is it fair to say that this projected time period is your
17 best estimate on the most likely timeframe needed?

18 A It's -- I think it's the best estimate that we have based
19 upon our experience with the assets, again, and our projection
20 of the marketplace that we see now. If things change, we'll
21 adjust it, but this is a fair estimate of when we can get the
22 monetization accomplished.

23 Q Okay. The next assumption relates to certain demand
24 notes. Do you see that?

25 A Yes.

001610

Seery - Direct

124

1 Q Can you explain to the Court what that assumption is and
2 why the Debtor believed that it was reasonable?

3 A Well, the Debtor has certain notes that are demand notes.
4 These are all from related entities. Most of the notes, the
5 demand notes, we have demanded, and we've commenced litigation
6 to collect. And we assume that we're going to be able to
7 collect those.

8 Three notes that were long-term notes -- these were notes
9 with maturities in 2047 that had been stretched out a couple
10 years ago -- were defaulted recently. And we have accelerated
11 those notes and we've asserted demands and we have commenced
12 litigation, I believe, on each of those last week to collect.
13 So we do estimate that we will collect on all of the notes
14 that we've demanded and that we've commenced action on. So
15 the demand notes as well as the accelerated notes.

16 The next, the next bullet shows there's one Dugaboy note
17 that has not defaulted. That also has a 2047 maturity. I
18 believe it's about \$18 million. And we expect that one to
19 stay current, because now I think the relater parties learned
20 that when you don't pay a long-dated note, it accelerates,
21 provided the holder, which is us, wishes to accelerate it,
22 which we did. And so that note we do not expect to be
23 collected in the time period.

24 Q Okay.

25 MR. MORRIS: Let's go down to M.

001611

1 BY MR. MORRIS:

2 Q M relates to certain claims. Do you see that?

3 A Yes.

4 Q Can you just describe at a high level what assumption was
5 made with which -- with respect to which particular claims?

6 A Well, we've summarized them there. And what we've assumed
7 is that, with respect to Class 8, IFA, which is a derivative
8 litigation claim that seeks to hold, loosely, HCMLP liable for
9 obligations of NexBank, is worth zero. I think that's pretty
10 close to settling. We assumed here \$94.8 million for UBS,
11 which was the estimated amount, and \$45 million for
12 HarbourVest.

13 Q And when you say the estimated amount, are you referring
14 to the 3018 order on voting?

15 A Yes. We just use the estimated amount in this projection
16 based upon the 3018 order.

17 Q Okay. And finally, let's look at P. P has a payout
18 schedule. Do I have that right?

19 A That's an estimated payout schedule, yes.

20 Q And what do you mean by that, that it's estimated?

21 A Based upon our projections and how we perceive being able
22 to monetize the assets and reach the valuations that we want
23 to reach, we believe we could make these distributions.
24 However, there's no requirement to make them.

25 So the first and foremost objective we have, as I said

Seery - Direct

126

1 earlier, is to maximize value, and not -- it's not based on a
2 payment schedule, it's based upon the market opportunity. And
3 we've estimated for our purposes here that we'll be able to
4 meet these distribution amounts, but there's no requirement to
5 do so.

6 Q Okay.

7 MR. MORRIS: Let's go to Page 3 of the document,
8 please.

9 BY MR. MORRIS:

10 Q Can you just describe generally what this page reflects?

11 A This is a comparison of the plan analysis and what we
12 expect to achieve under the plan and the liquidation analysis
13 if a trustee, a Chapter 7 trustee, were to take over. And it
14 compares those two distribution amounts based upon the
15 assumptions on the prior page.

16 Q All right. Let's just look at some of the -- some of the
17 data points on here. If we look at the plan analysis, what is
18 -- what is projected to be available for distribution, the
19 value that's available for distribution?

20 A \$222.6 million.

21 Q Okay. So, 222? And on a claims pool that's estimated to
22 be, for this purpose, how much?

23 A \$313 million.

24 Q And what is the distribution, the projected distribution
25 to general unsecured creditors on a percentage basis?

001613

1 A On this analysis, to general unsecured creditors, it's
2 62.14 percent. But remember, that backs out the payment to
3 the Class 7 creditors of 85 cents above.

4 Q Okay. And does this plan analysis include any value for
5 litigation claims?

6 A No, it does not.

7 Q And is that true for all forms of the Debtor's
8 projections?

9 A That's correct, yes.

10 Q Okay. And let's look at the right-hand column for a
11 moment. It says, Liquidation Analysis. What does that column
12 represent?

13 A That represents our estimate of what a Chapter 7 trustee
14 could achieve if it were to take over the assets, sell them,
15 and make distributions.

16 Q Okay. And let's just look at the comparable data points
17 there. Under the liquidation analysis, as of -- the January
18 liquidation analysis as of last week, what was projected to be
19 available for distribution?

20 A A hundred and -- approximately \$175 million.

21 Q Okay. And what was the claims pool?

22 A The claims pool was \$326 million. Recall that that's a
23 slightly larger claims pool because it doesn't back out the
24 Class 7 claims.

25 Q Okay. The convenience class claims?

1 A Correct.

2 Q Okay. And what's the projected recovery for general
3 unsecured claims under the liquidation analysis?

4 A Based on this analysis and the assumptions, 48 (audio
5 gap).

6 Q Okay. Based on the Debtor's analysis, are creditors
7 expected to do better under this analysis in the -- under the
8 Debtor's plan versus the hypothetical Chapter 7 liquidation?

9 A Yes. Both -- both Class 7 and Class 8.

10 Q Okay. Now, this set of projections differs from the
11 projections that were included in the disclosure statement; is
12 that right?

13 A That's correct.

14 Q Okay. Can we just talk about what the differences are
15 between the November projections that were in the disclosure
16 statement and the January projections that are up on the
17 screen? Let's start with the monetization of assets, the
18 second line. Do you recall if there was an increase, a
19 decrease, or did the value from the monetization of assets
20 stay the same between the November projections and the January
21 projections?

22 A They increased from November 'til -- 'til now.

23 Q Okay. Can you explain to the judge why the value from the
24 monetization of assets increased from November to January?

25 A Well, really, it's the composition of the assets and their

Seery - Direct

129

1 value. So there's four main drivers.

2 The first is HarbourVest. We had a settlement with
3 HarbourVest, which include HarbourVest transferring to the
4 Debtor \$22-1/2 million of HCLOF interests. Those have a real
5 value, and we've now included them in the -- in the asset
6 pool. We've also included HarbourVest in the claims pool.

7 The second was we talked a little bit earlier on the
8 assumptions on the notes. We previously had anticipated that,
9 on the long-dated notes, a collection, we -- we'd receive
10 principal and interest currently, but we wouldn't receive the
11 full amount of the principal that was due well off in the
12 future, and we would sell it a discount.

13 So the amount of the asset pool has been increased by \$24
14 million, and that reflects the delta between or the change
15 between what was in the prior plan, the notes paying and then
16 being sold at a discount, and what's in the current plan,
17 which include the accelerated notes, which is a \$24 million
18 note that Advisors defaulted on that we have accelerated and
19 brought action on, as well as two six -- roughly \$6 million
20 notes, one from Highland Capital Real Estate and the other
21 from HCM Services. So that's, that's additional 24.

22 In addition, Trussway, we've reexamined where Trussway is
23 in the market, both its marketplace and its performance, and
24 reassessed where the value is. So that has increased by about
25 \$10.6 million.

001616

Seery - Direct

130

1 That doesn't mean that we would sell it today. It means
2 that, when you look at the performance of the company, what we
3 think are the best opportunities in the market. As we see the
4 marketplace with managing the company over time, we think that
5 that asset has appreciated considerably since November.

6 And then, finally, there were additional revenues that
7 flow into the model from the November analysis which would be
8 distributable, and those include revenues from the 1.0 CLOs.

9 Q Okay. So that accounts for the difference and the
10 increase in value from the monetization of assets. Is there
11 also an increase in expenses from the November projections to
12 the January projections?

13 A Yeah. It's -- it's about -- it's around \$25 million
14 additional increase.

15 Q And can you explain to the Court what is the driver behind
16 that increase in expenses?

17 A Yeah. There's several drivers to that. The first one is
18 head count. So our head count, we've increased. As I
19 mentioned earlier, we determined that we wanted to have a much
20 more robust management presence. So we've increased the head
21 count, so we have a base comp, compensation, about \$5 million
22 more than we initially thought.

23 Secondly, we have bonus comp. So we've back-ended --
24 structured a backend bonus performance bonus for the team, and
25 that will run another \$5 million, roughly.

001617

Seery - Direct

131

1 Previously, we had thought about, as you mentioned
2 earlier, the sub-servicing, but we've now talked about and we
3 have engaged a TPA, SEI, as well as experienced advisors.
4 That's another \$1 to \$2 million.

5 Operating expenses have increased by about \$8 million,
6 based upon our assessment. The biggest driver there is D&O,
7 which is up about \$3 million. In addition, we've gotten -- we
8 determined to keep a bunch of agreements related to data
9 collection and operations. Those were requested by the
10 Committee, but they also serve us in performing our functions.
11 That's another couple million dollars.

12 My comp, my bonus comp was not in the prior model. So I
13 have a bonus that has not been agreed to by the Court for the
14 bankruptcy performance. This is not a future bonus. And we
15 built that into the model. Obviously, it's subject to Court
16 approval and Committee objection, and I suppose anybody else's
17 objection, but we'll -- we'll be before the Court for that.
18 But we wanted to build that into the model so that we had it
19 covered in the event that it was approved.

20 Q Was there also a change in the assumption from November to
21 January with respect to the size of the general unsecured
22 claim pool?

23 A Yes. There have been -- there have been several changes
24 that have happened, and we've added those and refined the
25 claim pool numbers.

001618

Seery - Direct

132

1 Q And are those changes reflected in the assumption we
2 looked at earlier, Exhibit -- Assumption M, which went through
3 certain claims that have been liquidated?

4 A Some, some are. That assumption, I don't believe, was --
5 it's not in front of me, but wasn't up to date. So, that one,
6 for example, assumed UBS at the 3018 estimated amount. We've
7 since refined that number to reflect the agreed-upon
8 transaction with UBS, which is subject to Court approval.

9 Q Right. But before we get to that, for purposes of the
10 January model, the one that's up on the page -- and if we need
11 to look at the prior page --

12 MR. MORRIS: Let's go to the prior page, the
13 assumption. Assumption M.

14 BY MR. MORRIS:

15 Q Assume the UBS, the UBS claim at the \$94.8 million, the
16 3018 number. Do you remember that?

17 A Yeah. That's, that -- that's the assumption in this
18 model. I think back in November we assumed HarbourVest at
19 zero and UBS at zero. So we've since -- we've since refined
20 those numbers, obviously, through both the 3018 process as
21 well as the settlement with HarbourVest.

22 Q And did the -- did the inclusion -- withdrawn. At the
23 time that you prepared the November model -- withdrawn. At
24 the time the Debtor prepared the November model, did it know
25 what the UBS or the HarbourVest claims would be valued at?

001619

Seery - Direct

133

1 A No. We just had our assumption back then, which was zero.
2 And now, obviously, we know.

3 Q And so the January model took into account the settlement
4 with HarbourVest and the 3018 motion; do I have that right?

5 A That's correct. That's in the assumptions.

6 Q And what was the impact on the projected recoveries to
7 general unsecured creditors from the changes that you've just
8 described, including the increase in the claims amount?

9 A Well, when -- like any fraction, the distribution will go
10 down if the claimant pool goes up. So, with the denominator
11 going up by the UBS and the UBS amount -- the UBS and the
12 HarbourVest amounts, the distribution percentage went down.

13 Q Okay. I want to focus your attention on the second line
14 where we've got the monetization of assets under the plan at
15 \$258 million but under the liquidation analysis it's \$192
16 million. Do you see that?

17 A Yes.

18 Q Can you tell Judge Jernigan why the Debtor believes that
19 under the plan the Debtor or the post-confirmation Debtor is
20 likely to receive or recover more for the --

21 (Interruption.)

22 THE COURT: All right. Hang on a minute. Where is
23 that coming from, Mike?

24 THE CLERK: Someone is calling in.

25 THE COURT: Okay.

001620

Seery - Direct

134

1 MR. MORRIS: Thank you.

2 THE COURT: Mr. --

3 MR. MORRIS: Let me restate the question.

4 THE COURT: Yes. Restate.

5 BY MR. MORRIS:

6 Q Can you explain to Judge Jernigan why the Debtor believes
7 that the -- under the plan corporate structure, the Debtor is
8 likely to recover more from the monetization of assets than a
9 Chapter 7 liquidation trustee would?

10 A Sure. My experience is that Chapter 7 trustees will
11 generally try to move quickly to monetize assets. They will
12 retain their own professionals, they will examine the assets,
13 and they will look to sell those assets swiftly.

14 The monetization plan does not plan to do that. I've got
15 a year's of experience -- a year now of experience with these
16 assets, as well as we'll have a team with several years at
17 least each of experience with the assets. We intend to look
18 for market opportunities, and think we'll be able to do it in
19 a much better fashion than a liquidating Chapter 7 trustee.

20 The nature of these assets is complex. Many of them are
21 private equity investments in operating businesses. Certain
22 of them are complicated real estate structures that need to be
23 dealt with. Some of them are securities that, depending on
24 when you want to sell them, we believe there'll be better
25 times than moving quickly forward to sell them now.

001621

1 So, with each of them, we think that we'll be able to do
2 better than a Chapter 7 trustee based upon our experience.
3 The only thing that we're level-set with a Chapter 7 trustee
4 on is that cash is cash.

5 Q Do you have any concerns that a Chapter 7 trustee might
6 not be able to retain the same personnel that the Debtor is
7 projected to retain?

8 A Well, again, in my experience, it would be very difficult
9 for a Chapter 7 trustee to retain the same professionals, and
10 typically they don't.

11 Secondly, retaining the individuals, I think, would be
12 very difficult for a Chapter 7 trustee, would not have a
13 relationship with them, and that gap of time and the risks
14 that they would have to take to join a Chapter 7 trustee I
15 think would lead most of them to look for different
16 opportunities.

17 Q Okay. One of the other things, one of the other changes I
18 think you mentioned between the November and the January
19 projections was the decision to assume the CLO management
20 contracts. Do I have that right?

21 A That's correct.

22 Q And why has the Debtor decided to assume the CLO
23 management contracts? How does that impact the analysis on
24 the screen?

25 A Well, it does add to the expense, but it also adds to the

1 proceeds.

2 When we did the HarbourVest settlement, we ended up with
3 the first significant interest in HCLOF. HCLOF owns the vast
4 majority of the equity in Acis 7, and also owns significant
5 preferred share interests in the 1.0 CLOs. And we think it's
6 in the best interest of the estate to keep the management of
7 those assets where we have an interest in the outcome of
8 maximizing value with the estate.

9 In addition, we're going to have employees who are going
10 to work with us to manage those specific assets, so we feel
11 like that will be something where we can control the
12 disposition much better.

13 There's also cross-interests that these CLOs have in --
14 the 1.0 CLOs have in a number of other investments that
15 Highland has. As in all things Highland, it's interrelated,
16 and so many of the companies have direct loans from the CLOs.
17 We intend to refinance that, but we feel much more comfortable
18 and feel that there would be value maximization if we're able
19 to work directly with the Issuers as a manager while we seek
20 in those underlying investments to refinance the CLO debt.

21 Q Has the Debtor -- has the Debtor reached an agreement with
22 the Issuers on the assumption of the CLO management
23 agreements?

24 A Yes, we have.

25 Q Can you describe for the Court the terms of the

Seery - Direct

137

1 assumption?

2 MR. RUKAVINA: Your Honor, this --

3 THE WITNESS: Yes.

4 MR. RUKAVINA: Your Honor, this is Davor Rukavina. I
5 would object to this as hearsay.

6 THE COURT: Well, he has not --

7 MR. MORRIS: It's --

8 THE COURT: He's not said an out-of-court statement
9 yet, so I overrule.

10 Go ahead.

11 THE WITNESS: Yeah, we -- we are going to assume the
12 CLO contracts. We have had direct discussions with the
13 Issuers. They have agreed.

14 The basic terms are that we're going to cure them by
15 satisfying about \$500,000 of cure costs related to costs that
16 the CLO Issuers have incurred in respect of the case, and
17 we'll be able to pay that over time.

18 MR. RUKAVINA: Your Honor, this is Davor Rukavina. I
19 would renew my objection and move to strike his answer that
20 they've agreed. That is hearsay, an out-of-court statement
21 offered to prove the truth of the matter asserted.

22 THE COURT: Okay. Mr. Morris, what is your response?

23 MR. MORRIS: He's describing an agreement. I
24 actually think it's in the Debtor's plan that's on file
25 already. But he's describing the terms of an agreement. He's

001624

Seery - Direct

138

1 not saying what anybody said. There's no out-of-court
2 statement. It's an agreement that's being described.

3 THE COURT: All right. Thank you. I overrule the
4 objection.

5 MR. MORRIS: Okay.

6 BY MR. MORRIS:

7 Q Does the Debtor believe that the CLO agreements will be
8 profitable?

9 A Yes.

10 Q And why does the Debtor believe that the CLO agreements
11 will be profitable to the post-confirmation estate?

12 A Well, we don't -- we don't break out profitability on a
13 line-by-line basis. But the simple math is that the revenues
14 from the CLO contracts which will roll in to the Debtor from
15 the management fees are more than what we anticipate the
16 actual direct costs of monitoring and managing those assets
17 would be.

18 Q Okay. Are you aware that yesterday the Debtor filed a
19 further revised set of projections?

20 A I am, yes.

21 Q All right. Let's call those the February projections.

22 MR. MORRIS: Can we put those on the screen?

23 It's Exhibit 7P, Your Honor.

24 THE COURT: Okay.

25 MR. MORRIS: All right. I think that for some reason

001625

Seery - Direct

139

1 -- yeah, okay. There we go. Perfect. Right there.

2 Your Honor, these are the projections that were filed
3 yesterday. I'm going to move for the admission into evidence
4 of these projections.

5 THE COURT: All right.

6 MR. TAYLOR: Your Honor, this is Clay Taylor.

7 THE COURT: Go ahead.

8 MR. TAYLOR: We object. These were -- these were not
9 previously provided. They were provided on the eve of the
10 confirmation hearing, after the Debtors had already revised
11 them once and provided those on -- after close of business on
12 a Friday before Mr. Seery's deposition. And these were
13 provided even later, certainly not within the three days
14 required by the Rule. And therefore we move to -- that these
15 should not be allowed into evidence.

16 THE COURT: Mr. Morris, what is your response to
17 that?

18 MR. MORRIS: Your Honor, first of all, the January
19 projections were provided in advance of Mr. Seery's deposition
20 and he was questioned extensively on it. These projections
21 have been updated since then, I think for the singular purpose
22 of reflecting the UBS settlement.

23 As Your Honor just saw, the prior projections included an
24 assumption based on the 3018 motion. Since Mr. Seery's
25 deposition, UBS and the Debtor have agreed to publicly

001626

Seery - Direct

140

1 disclose the terms of the settlement, and that's reflected in
2 these revised numbers. I think there was one other change
3 that Mr. Seery can testify to, but those are the only changes
4 that were made.

5 THE COURT: All right. Mr. Seery, what besides the
6 UBS settlement do you think was put in these overnight ones?

7 THE WITNESS: I believe the only other change, Your
8 Honor, was correcting a mistake. In Assumption M, the second
9 line is assumes RCP claims will offset against HCMLP's
10 interest in the fund and will not be paid from the Debtor's
11 assets. That hasn't changed.

12 Basically, the Debtor got an advance from RCP that was to
13 -- for tax distributions, and did not repay it. The RCP
14 investors are entitled to recovery of that. So we had
15 previously backed that out. It's about four million bucks.
16 What happened was it was just double-counted.

17 THE COURT: Okay.

18 THE WITNESS: So, as an additional claim, it was
19 counted as \$8 million. I think that's the only other change.

20 THE COURT: All right. I overrule the objection.
21 You may go forward. I admit 7P.

22 MR. MORRIS: Thank you, Your Honor.

23 (Debtor's Exhibit 7P is received into evidence.)

24 MR. MORRIS: Can you just -- if we can go to the next
25 page, please.

001627

1 BY MR. MORRIS:

2 Q So, with -- seeing that the claims pool under the plan
3 previously was \$313 million, and what's the claims pool under
4 the projections up on the screen under the plan?

5 A Two -- well, remember, there's 273 for Class 8, and then
6 you'd add in the Class 7 as well, which is the \$10.2 million.
7 So the 273 went from 313 to 273 with that settlement.

8 Q And is there any -- is there any reason for the decrease
9 other than the change from the 3018 settlement -- order figure
10 to the actual settlement amount?

11 A For the UBS piece, no. And then, as I mentioned, I
12 believe the other piece would have been that four million --
13 that additional \$4 million that was taken out.

14 Q And did those two changes have a -- did those two changes
15 have an impact on the projected recoveries under the plan?

16 A Sure, particularly with respect to -- to the Class 8.
17 Those recoveries went up significantly because the denominator
18 went up.

19 Q Okay. Does the Debtor believe that its plan is feasible?

20 A Yes, absolutely.

21 Q And do you know whether the administrative priority and
22 convenience class claims will be paid in full under the
23 Debtor's plan?

24 A Yes. We monitor the cash very closely, so we do have
25 additional cash to raise, but we're set to reach or exceed

Seery - Direct

142

1 that target, so we do believe we'll be able to pay all the
2 administrative claims when they come in. Obviously, we have
3 to see what they are. We will be able to pay Class 7 on the
4 effective date. Any other distributions, we expect to be able
5 to make as well.

6 So, and then it's -- then it's a question of going forward
7 with a few other claims that we have to pay over time. We
8 have the cash flow to pay those. Frontier, for example, we'll
9 be able to pay that claim over time in accordance with the
10 restructured terms. If the assets that secure that claim are
11 sold, they would be paid when those assets are sold.

12 Q Frontier, will the plan enable the Debtor to pay off the
13 Frontier secured claim?

14 A Yes. That's what I was explaining. The cash flow is
15 sufficient to support the current P&I on that claim. We will
16 be able to satisfy it from other assets if we determine not to
17 sell the asset securing the Frontier claim, or if we sell the
18 asset securing the Frontier claim we could satisfy that claim.
19 The asset far exceeds the value of the claim.

20 Q Has the plan been proposed for the purpose of avoiding the
21 payment of any taxes?

22 A No. We expect all tax claims to be paid in accordance
23 with the Code, and to the extent that there are additional
24 taxes generated, we would pay them.

25 Q Okay. Let's just talk about Mr. Dondero for a moment

001629

Seery - Direct

143

1 before we move on. Are you aware that Mr. Dondero's counsel
2 has requested the backup to, you know, these numbers,
3 including the asset values?

4 A It -- I'm not sure if it was his counsel or one of the
5 other related-entity counsels.

6 Q Okay. But you're aware that a request was made for the
7 details regarding the asset values and the other aspects of
8 this?

9 A Yes.

10 Q Those were -- were those formal requests or informal
11 requests?

12 A They were certainly at my deposition.

13 Q Right. But you haven't seen a document request or
14 anything like that, have you?

15 A No.

16 Q Did the Debtor make a decision as to whether or not to
17 provide the rollup, the backup information to Mr. Dondero or
18 the entities acting on his behalf?

19 A Yes.

20 Q And what did the Debtor decide?

21 A We would not do that.

22 Q And why did the Debtor decide that?

23 A Well, I think that's pretty standard. The underlying
24 documentation and the specific terms of the model are very
25 specific, and they are -- they are confidential business

001630

1 information that runs through what we expect to spend and what
2 we expect to receive and when we expect to sell assets and
3 then receive proceeds, and the prices at which we expect to
4 sell them.

5 To the extent that any entity wants to have that
6 information as a potential bidder, that would be very
7 detrimental to our ability to maximize value. So, typically,
8 I wouldn't expect that to be given out, and I would not
9 approve it to be given out here.

10 Q Did the Debtor disclose to Mr. Dondero's counsel or
11 counsel for one of his entities the agreement in principle
12 with UBS before the updated plan analysis was filed last
13 night?

14 A I believe that disclosure was done a while ago, to Mr.
15 Lynn.

16 Q So, to the best of your -- so, to the best of your
17 knowledge, the Debtor actually shared the specifics of the
18 agreement with UBS with Mr. Dondero and his counsel before
19 last night?

20 A Yes. I have specific personal knowledge of it because we
21 had to ask UBS for their permission, and they agreed.

22 Q Okay.

23 MR. MORRIS: All right. Let's move on to 1129(b),
24 Your Honor, the cram-down portion.

25 BY MR. MORRIS:

Seery - Direct

145

1 Q Are you aware, Mr. Seery, how various classes have voted
2 under the plan?

3 A I am generally, yes.

4 Q Okay. Did any class vote to reject the plan, to the best
5 of your knowledge?

6 A I don't -- I guess it depends on how you define the class.
7 I think the answer is that I don't believe that, when you
8 count the full votes of the -- the allowed claims and the
9 votes in any class, I don't believe any of the classes voted
10 to reject the plan.

11 Q What type of claims are in Class 8?

12 A General unsecured claims.

13 Q And what percentage of the dollar amount of Class 8 voted
14 to accept?

15 A It's -- I think it's near -- now with the Daugherty
16 agreements, it's near a hundred percent of the third-party
17 dollars. I don't know the individual employees' claims off
18 the top of my head.

19 Q All right. And what about the number in Class 8? Have a
20 majority voted to accept or reject in Class 8?

21 A If you include the employee claims -- which, again, we
22 think have no dollar amounts -- then I think it's a majority
23 would have rejected. The vast dollar amounts did accept.

24 Q Okay. Let's talk about those employees claims for a
25 moment. Do you have an understanding as to the basis of the

001632

Seery - Direct

146

1 claims?

2 A Yes.

3 Q What's your understanding of the basis of the claims?

4 A Most of the claims are based on deferred compensation, and
5 that's the 2005 Highland Capital Management bonus plan. And
6 that bonus plan provides certain deferred payment amounts to
7 the employees to be paid over multiple-year periods, provided
8 that they are in the seat when the payment is due. That's the
9 vesting date.

10 Q Okay.

11 MR. MORRIS: Your Honor, just as a note-keeping
12 matter, the deferred compensation plan and the annual bonus
13 plan are Exhibits 6F and 6G, respectively, and they're on
14 Docket 1822.

15 THE COURT: All right.

16 BY MR. MORRIS:

17 Q And Mr. Seery, are you generally familiar with those
18 plans?

19 A I am, yes.

20 Q In order to receive benefits under the plans, are the
21 employees required to be employed at the time of vesting?

22 A Yeah. Our counsel refers to them, various terms, but
23 generally -- our outside labor counsel. They're referred to
24 as seat-in-the-seat plans, meaning that your seat has to be in
25 a seat at the office at the day that the payment is due. If

001633

Seery - Direct

147

1 you're terminated for cause or if you resign, you're not
2 entitled to any payment.

3 So either you're there and you receive it or you're not
4 and you don't. The only exception to that, I believe, is
5 death and disability. Or disability.

6 Q All right. Did the Debtor terminate the annual bonus
7 plan?

8 A Yes, we did.

9 Q And in what context did the Debtor terminate the annual
10 bonus plan?

11 A Well, we had discussion on it last week. As Mr. Dondero
12 had also testified, the plan was to terminate all the
13 employees prior to the transition. That's well known among
14 the employees. The board terminated the 2005 bonus plan and
15 instead replaced it with a KERP plan that was approved by this
16 Court.

17 Q And what was your understanding of the consequences of the
18 termination of the bonus plan for -- for purposes of the
19 claims that have been asserted by the employees who rejected
20 in Class 8?

21 A It's clear that, under the 2005 HCMLP bonus plan, no
22 amounts are due because the plan has been terminated.

23 Q All right. Do you have an understanding as to when
24 payments become due under the deferred compensation -- under
25 the compensation plan?

001634

Seery - Direct

148

1 A I do, yes.

2 Q And when are they due?

3 A The next payments are due in May.

4 Q And what is the Debtor intending to do with respect to the
5 objecting employees?

6 A The Debtor will have terminated all those employees before
7 that date.

8 Q All right. So, what's -- what are the consequences of
9 their termination vis-à-vis their claims under the deferred
10 compensation plan?

11 A They won't have any claims.

12 Q Okay. So is it the Debtor's view that the employees who
13 voted to reject in Class 8 have no valid claims under the
14 annual comp -- annual bonus plan or the deferred compensation
15 plan?

16 MR. RUKAVINA: Your Honor, this is Davor Rukavina.
17 With due respect, Your Honor, these employees have voted. The
18 voting is on file. There has been no claim objections to
19 their claims filed. There's been no motion to designate their
20 votes filed. So Mr. Seery's answer to this is irrelevant.
21 They have votes -- pursuant to this Court's disclosure
22 statement order, they have votes and they have counted, and
23 now Mr. Seery is attempting to basically impeach his own
24 balloting summary.

25 THE COURT: Mr. Morris, what is your response?

001635

Seery - Direct

149

1 MR. MORRIS: The point of cram-down, Your Honor, is
2 it fair and equitable. Does -- does -- is it really fair and
3 equitable to the 99 percent of the economic interests to allow
4 24 employees who have no valid claims to carry the day here?
5 And this is -- that's what cram-down is about, Your Honor.

6 THE COURT: All right. I overrule the objection.

7 BY MR. MORRIS:

8 Q Let's talk about Class 7 for a moment, Mr. Seery. That's
9 the convenience class; is that right?

10 A That's correct.

11 Q How and why was that created?

12 A Well, initially, that was created because we had two types
13 of creditors in the case, broadly speaking. We had liquidated
14 claims, which were primarily trade-type creditors, and we had
15 unliquidated claims, which were the litigation-type creditors.
16 And so that class was created to deal with the liquidated
17 claims, and the Class 8 would deal with the unliquidated
18 claims, which were expected to, as we talked about earlier
19 with respect to the monetization plan, take some time to
20 resolve.

21 Q Was the creation of the convenience class a product of
22 negotiations with the Committee?

23 A The initial discussion on how we set it up I believe was
24 generated by the Debtor's side, but how it evolved and who
25 would be in it and how it was treated in terms of

001636

Seery - Direct

150

1 distributions was a product of negotiation with the Committee.

2 Q Okay. So how was the dollar threshold figure arrived at?
3 How did you actually determine to create a convenience class
4 at a million dollars?

5 A It was through negotiation with the Committee. So this
6 was one of those items that moved a fair bit, in my
7 recollection, through the many negotiations we had, heated
8 negotiations on some of these items, with the Committee.

9 Q And are all convenience class -- all holders of
10 convenience class claims holders of claims that were
11 liquidated at the time the decision was made to create the
12 class?

13 A I believe so. I don't think there's been -- other than --
14 well, there -- we just had some settlements today, and I think
15 that relates to the employees, but those would be the only
16 ones that there would be disputes about, and that would roll
17 into the liquidat... the convenience class.

18 Q Okay. Finally, is there any circumstance under which
19 holders of Class 10 or 11, Class 10 or Class 11 claims will be
20 able to obtain a recovery under the plan?

21 A Theoretically, there's a circumstance, and that is if
22 every other creditor in the case were to be paid in full, with
23 interest at the federal judgment rate, including Class 9,
24 which are the subordinated claims. If those all got paid in
25 full, then theoretically the junior interest holders could

001637

Seery - Direct

151

1 receive distributions.

2 However, based upon our projections, that would be wholly
3 dependent on a significant recovery in the Litigation -- by
4 the Litigation Trustee.

5 Q Okay. Let's move now to questions of the Debtor release
6 and the plan injunction. Is the Debtor providing a release
7 under the plan?

8 A Yes.

9 Q Is anyone other than the Debtor providing a release under
10 the plan?

11 A No.

12 Q Who is the Debtor proposing to release under the plan?

13 A The release parties are pretty similar to what you
14 typically would see, in my experience, in most plans. You
15 have the independent board, myself as CEO and CRO, the
16 professional -- the Committee members, the professionals in
17 the case, and the employees that we reached agreement with
18 respect to certain of them who have signed on to a
19 stipulation, and others, get a broader release for negligence.

20 Q Okay. Is the Debtor aware of any facts that might give
21 rise to a colorable claim against any of the proposed release
22 parties?

23 A Not with respect to any of the release parties. So the --
24 obviously, I don't think there's any claims against me. But
25 the same is true with respect to the oversight board, the

001638

Seery - Direct

152

1 independent board.

2 The Committee has been, you know, working with us hand-in-
3 glove, and I think if they thought we -- there was something
4 there, we would have heard it.

5 With respect to the professionals, we haven't seen
6 anything as an independent board.

7 And with respect to the employees' that -- general
8 negligence release, these are current employees and we have
9 been monitoring them for a year and we don't have any evidence
10 or anything to suggest that there would be a claim against
11 them.

12 Q Are there conditions to the employees' release?

13 A There are. So, the employee release, as we talked about
14 earlier, was highly negotiated with the Committee. It
15 requires that employees assist in the monetization efforts,
16 which is really on the transition and the monetization. They
17 don't have to assist in bringing litigations against anybody,
18 so that's not part of what the provision requires. But it
19 does require that they assist generally in our efforts to
20 monetize assets.

21 We don't think that's going to be significant, but if
22 there are individual questions or help we need, we certainly
23 would reach out to them. If it's significant time, that will
24 be a different discussion.

25 And then with respect to the two senior employees who

001639

Seery - Direct

153

1 signed the stipulation, they have to give up a part of their
2 distribution for their release.

3 Q All right. I think you just alluded to this, but has the
4 release been the subject of negotiation with the Creditors'
5 Committee?

6 A Yeah. We've touched on it a bunch of times, and we
7 certainly, unfortunately, let it spill over into the court a
8 couple times. It was a hotly-negotiated piece of the plan.

9 Q Okay. Has the Committee indicated to the Debtor in any
10 way that anybody subject to the release is the subject of a
11 colorable claim?

12 A Anyone subject to the release? No.

13 Q Yeah. All right. Let's talk about the plan injunction
14 for a moment. Are you familiar with the plan injunction?

15 A Broadly, yes.

16 Q And what is your broad understanding of the plan
17 injunction?

18 A Anybody who has a claim or thinks they have a claim will
19 broadly be enjoined from bringing that, other than as it's
20 satisfied under the plan or else ultimately bringing it before
21 this Court. And that's the gatekeeper part, which is a little
22 bit of combining the two pieces.

23 Q And what's your understanding of the purpose of the
24 injunction?

25 A It's really to prevent vexatious litigation. We, as

001640

Seery - Direct

154

1 independent directors, stepped into what I think most people
2 would fairly say is one of the more litigious businesses and
3 enterprises that they've seen. And we have a plan that will
4 allow us to monetize assets for the benefit of the creditor
5 body, provided we're able to do that and not have to put out
6 fires every day on different fronts. So what we're hoping to
7 do with the injunction is ensure that we can actually fulfill
8 the purposes of the plan.

9 Q All right. Let's talk about some of the litigation that
10 you're referring to.

11 MR. MORRIS: Can we put up on the screen the
12 demonstrative for the Crusader litigation?

13 BY MR. MORRIS:

14 Q And Mr. Seery, I would just ask you to kind of describe
15 your understanding in a general way about the history of the
16 Crusader litigation.

17 MR. MORRIS: And, Your Honor, just to be clear here,
18 this is a demonstrative exhibit. As you can see in the
19 footnotes, it's heavily footnoted to the documents and to --
20 and, really, to the court cases themselves. The documents on
21 the exhibit list include the dockets from each of the
22 underlying litigations. And I just want to just have Mr.
23 Seery describe at an extremely high level some of the
24 litigation that the Debtor has confronted over the years, you
25 know, as the driver, as he just testified to, for the decision

001641

Seery - Direct

155

1 to seek this gatekeeper injunction.

2 THE COURT: All right.

3 BY MR. MORRIS:

4 Q So, Mr. Seery, can you just describe kind of in general
5 terms the Crusader litigation?

6 A Yeah. I apologize to the Redeemer team for maybe not
7 doing this justice. But this is litigation that came out of a
8 financial crisis upheaval related to this fund. Disputes
9 arose with respect to the holders of the interests, which were
10 the -- ultimately became the Redeemers, and Highland as the
11 manager.

12 That went through initial litigation, and then into the
13 Bermuda courts, where it was subject to a scheme. The scheme
14 required or allowed for the liquidation of the fund and then
15 distributions to the -- to the holders, and then deferred many
16 of the payments to Highland.

17 At some point, Highland, frustrated that it wasn't able to
18 get the payments, decided to just take them, and I think, you
19 know, fairly -- can be fairly described, at least by the
20 arbitration panel, as coming up with reasons that may not have
21 been wholly anchored in reality as to what its reasons were
22 for taking that money.

23 That led to further disputes with the Redeemers, who then
24 terminated Highland and brought an arbitration action against
25 Highland. They were successful in that arbitration and

001642

Seery - Direct

156

1 received a \$137 arbitration award. And right up to the
2 petition date, that arbitration pursued. When they finally
3 got their -- the arbitration award, they were going to
4 Delaware Chancery Court to file it and perfect it, and the
5 Debtor filed.

6 Q Okay.

7 MR. MORRIS: Let's go to the next slide, the Terry/
8 Acis slide. If we could just open that up a little bit. It's
9 -- as you can imagine, Your Honor, it's a little difficult to
10 kind of summarize the Acis/Terry saga in one slide, but we've
11 done the best we can.

12 BY MR. MORRIS:

13 Q Mr. Seery, can you describe generally for Judge Jernigan,
14 who is well-versed in the matter, the broad overview of this
15 litigation?

16 A There's clearly nothing I can tell the Court about the
17 bankruptcy that it doesn't already know. But very quickly,
18 for the record, Mr. Terry was an employee at Highland. He
19 also has a partnership interest in Acis, which was, in
20 essence, the Highland CLO business. He -- and he got into a
21 dispute with Mr. Dondero regarding certain transactions that
22 Mr. Dondero wanted to enter into and Mr. Terry didn't believe
23 were appropriate for the investors.

24 Strangely, the assets that underlie that dispute are still
25 in the Highland portfolio, both Targa (phonetic) and Trussway.

001643

Seery - Direct

157

1 Mr. Terry was terminated, or quit, depending on whose side of
2 the argument you take. Mr. Terry then sought compensation in
3 the arbitration pursuant to the partnership agreement.
4 Ultimately, he was awarded an arbitration award of roughly \$8
5 million.

6 When he went to enforce that -- that was against Acis.
7 When he went to enforce that against Acis, which had all the
8 contracts, Highland went about, I think, terribly denuding
9 Acis and moving value. Mr. Terry ultimately was able to file
10 an involuntary against Acis, and after a tremendous amount of
11 litigation had a plan confirmed that gave him certain rights
12 in Acis and any ability to challenge certain transactions with
13 respect to Highland that formed the basis of his claims in the
14 Highland bankruptcy.

15 That wasn't the end of the saga, because Highland
16 commenced a litigation -- well, not Highland, but HCLOF and
17 others, directed by others -- commenced litigation against Mr.
18 Terry in Guernsey, an island in the English Channel. That
19 litigation wound its way for a couple -- probably close to two
20 years, at least a year and a half, and ultimately was -- it
21 was dismissed in Mr. Terry's favor.

22 While that was pending, litigation was commenced in New
23 York Supreme Court against Mr. Terry and virtually anybody who
24 had ever associated with him in the business, including --
25 including some of the rating agencies. That was withdrawn as

001644

Seery - Direct

158

1 part of our efforts working with DAF to try to bring a little
2 bit of sanity to the case. But it was withdrawn without
3 prejudice.

4 But ultimately, you know, we've agreed to a claims
5 settlement, which was approved by this Court, with Acis and
6 Mr. Terry.

7 Q All right.

8 MR. MORRIS: How about UBS? Can we get the UBS
9 slide?

10 THE WITNESS: I should mention that there's other
11 litigations involving Mr. Terry and Highland individuals that
12 are outstanding, I believe, in Texas court. We have not yet
13 had to deal with those.

14 BY MR. MORRIS:

15 Q Okay. Can you describe for the Court your general
16 understanding of the UBS litigation?

17 A Again, UBS comes out of the financial crisis. It was a
18 warehouse facility that UBS had established for Highland. It
19 actually was a pre-crisis facility that was restructured in
20 early '08, while the markets were starting to slide but before
21 they really collapsed. That litigation started after Highland
22 failed to make a margin call. UBS foreclosed out -- or it
23 wasn't really a foreclosure, because it's a warehouse
24 facility, but basically closed out all the interest and sought
25 recovery from Highland for the shortfall.

001645

Seery - Direct

159

1 Highland was one of the defendants, but there are numerous
2 defendants, including some foreign subsidiaries of Highland.

3 That case went its way through the New York Supreme Court,
4 up and down between the Supreme and the Appellate Division,
5 which is the intermediate appellate court in New York.
6 Incredibly litigious effort over virtually every single item
7 you could possibly think of.

8 Ultimately, UBS got a judgment for \$500-plus million and
9 -- plus prejudgment interest against two of the Highland
10 subsidiaries. It then sought to commence action up -- enforce
11 its judgment through various theories against Highland. That
12 is part of the settlement that we have -- it's been part of
13 the lift stay motion here, the 3019, as well as the 3018, and
14 as well as the ultimate settlement we've discussed today.

15 Q Okay. Moving on to Mr. Daugherty, can you describe for
16 the Court your understanding of the Daugherty litigation?

17 A The Daugherty litigation goes back even further. It did
18 -- I think the original disputes were -- or, again, started to
19 happen between Mr. Daugherty and Mr. Dondero even prior to the
20 crisis, but Mr. Dondero -- Daugherty certainly stayed with
21 Highland post-crisis. And then when Mr. Daugherty was severed
22 or either resigned or terminated from his position, there was
23 various litigations that began between the parties very
24 intensely in state court, one of the more nasty litigations
25 that you can imagine, replete with salacious allegations and

001646

Seery - Direct

160

1 press releases.

2 That litigation then led to an award originally for Mr.
3 Daugherty from HERA, which was an entity that had assets that
4 Mr. Daugherty alleges were stripped. Mr. Daugherty had to pay
5 a judgment against Highland. Ultimately, litigations were
6 commenced in both the state court and the Delaware Chancery
7 Court. Those litigations, many of those continue, because
8 they're not just against the entities but specific
9 individuals. Mr. Daugherty got a voting -- a claim allowed
10 for voting purposes in our case of \$9.1 million, and we've
11 since reached an agreement with Mr. Daugherty on his claim,
12 save for a tax case which we announced earlier that relates to
13 compensation, claimed compensation with respect to a tax
14 distribution, which we have defenses for and he has claims
15 for.

16 MR. MORRIS: All right. We can take that down,
17 please.

18 BY MR. MORRIS:

19 Q And let's just talk for a few minutes about some of the
20 things that have happened in this case. Did Mr. Dondero
21 engage in conduct that caused the Debtor to seek and obtain a
22 temporary restraining order?

23 A Yes, he did.

24 Q And did the Debtor -- did Mr. Dondero engage in conduct
25 that caused the Debtor to seek and obtain a preliminary

001647

Seery - Direct

161

1 injunction against him?

2 A Yes.

3 Q And has the Debtor filed a motion to hold Mr. Dondero in
4 contempt for violation of the TRO?

5 A Yes.

6 Q Are you aware that -- of the CLO-related motion that was
7 filed in mid-December?

8 A It's similar in that these are controlled entities that
9 brought similar types of claims against the Debtor and
10 interfered in similar ways, albeit not as directly threatening
11 with respect to the personnel of the Debtor.

12 Q Okay. And you're aware of how that -- that motion was
13 resolved?

14 A I know we resolved it, and I'm drawing a blank on that.
15 But --

16 Q All right. Are you aware, did Mr. Daugherty also object
17 to the Acis and HarbourVest settlements, or at least either
18 him or entities acting on his behalf?

19 A I think you meant Mr. Dondero. I don't believe Mr.
20 Daugherty did.

21 Q You're right. Thank you. Let me ask the question again.
22 Thank you for the clarification. We're almost done. To the
23 best of your knowledge, did Mr. Dondero or entities that he
24 controls file objections to the Acis and HarbourVest
25 settlements?

001648

Seery - Direct

162

1 A Yes, they did.

2 Q And we're here today with this long recitation because the
3 remaining objectors are all Mr. Dondero or entities owned or
4 controlled by him; is that right?

5 A That's correct.

6 Q All right.

7 MR. RUKAVINA: Your Honor, I didn't have a chance to
8 object in time. Entities owned or controlled by Mr. Dondero.
9 There's no evidence of that with respect to at least three of
10 my clients, and this witness has not been asked predicate
11 questions to lay a foundation. Mr. Dondero does not own or
12 control the three retail (inaudible). So I move to strike
13 that answer.

14 MR. MORRIS: Your Honor, I withdraw with respect to
15 the three funds. It's fine.

16 THE COURT: All right. With that withdrawal, then I
17 think that resolves the objection.

18 MR. MORRIS: Uh, --

19 THE COURT: Or I overrule the remaining portion.

20 Okay. Go ahead.

21 MR. RUKAVINA: That does, Your Honor. Thank you.

22 BY MR. MORRIS:

23 Q Are -- are -- is everything that you just described, Mr.
24 Seery, the basis for the Debtor's request for the gatekeeper
25 and injunction features of the plan?

001649

Seery - Direct

163

1 A Well, everything I described are a part of the basis for
2 that. I didn't describe every single basis with respect to
3 why those --

4 Q So what are -- what are the other reasons that the Debtor
5 is seeking the gatekeeper and injunction provisions in the
6 plan?

7 A We really do need to be able to operate the business and
8 monetize the assets without direct interference and litigation
9 threats. We didn't go through some of the specifics, and I
10 hesitate to burden the Court again, but the email to me, the
11 email to Mr. Surgent, the testimony threatening -- effectively
12 threatening Mr. Surgent, in my opinion, by Mr. Dondero, in the
13 court in previous weeks, statements by his counsel indicating
14 that Mr. Dondero is going to sue me for hundreds of millions
15 of dollars down the road.

16 I mean, this is nonstop. I'm an independent fiduciary.
17 I'm trying to maximize value for the estate. I've got some
18 guy who's threatening to sue me? It's absurd.

19 MR. MORRIS: Your Honor, I have no further questions,
20 but what I would respectfully request is that we take just a
21 short five-minute break. I'd like to just confer with my
22 colleagues before I pass the witness.

23 THE COURT: All right. Five-minute break.

24 MR. MORRIS: Thank you, Your Honor.

25 THE CLERK: All rise.

001650

Seery - Direct

164

1 (A recess ensued from 1:58 p.m. to 2:06 p.m.)

2 THE CLERK: All rise.

3 THE COURT: All right. Please be seated. We're back
4 on the record in Highland. Mr. Morris, anything else?

5 MR. MORRIS: All right, Your Honor. Can you hear me?

6 THE COURT: I can, uh-huh.

7 MR. MORRIS: Okay. Mr. Seery, are you there?

8 THE WITNESS: I am, yes.

9 MR. MORRIS: I just have a few follow-up questions,
10 Your Honor, if I may.

11 THE COURT: Okay.

12 DIRECT EXAMINATION, RESUMED

13 BY MR. MORRIS:

14 Q Okay. Mr. Seery, we talked for a bit about the difference
15 between the convenience class and the general unsecured
16 claims. Do you recall that?

17 A Yes.

18 Q And that's the difference between Class 7 and 8; do I have
19 that right?

20 A Yes.

21 Q And what is the recovery for claimants in Class 7, to the
22 best of your recollection, the convenience class?

23 A It's 85 cents.

24 Q And under --

25 A On the dollar.

001651

Seery - Direct

165

1 Q And under the projections that were filed last night, and
2 we can call them up on the screen if you don't have total
3 recall, do you recall what Class 8 is projected to recover now
4 that we've taken into account the UBS settlement?

5 A Approximately 71.

6 Q Okay.

7 A Percent. 71 cents on the dollar.

8 THE COURT: Okay. The answer --

9 BY MR. MORRIS:

10 Q Okay. Do I this right --

11 THE COURT: The answer was a little garbled. Can you
12 repeat the answer, Mr. Seery?

13 THE WITNESS: Approximately 71 cents on the dollar,
14 Your Honor.

15 THE COURT: Okay. Thank you.

16 BY MR. MORRIS:

17 Q Okay. And do I have that right, that that 71 cents
18 includes no value for potential litigation claims?

19 A That's correct. We didn't even put that in our
20 projections at all.

21 Q So is it possible, depending on Mr. Kirschner's work, that
22 holders of Class 8 claims could recover an amount in excess of
23 85 percent?

24 A It's possible, yes.

25 Q Okay. Are you aware that Dugaboy has suggested that the

001652

Seery - Direct

166

1 Debtor should resolicit because their -- their -- the
2 projections in the November disclosure statement were
3 misleading?

4 A I'm aware that they've made allegations along those lines,
5 yes.

6 Q Okay. Do you think the November projections were
7 misleading in any way?

8 A No, not at all.

9 Q And why not?

10 A Well, the plan was -- the projections are for the plan,
11 and they contain assumptions. And it was clear in the plan
12 that those assumptions could change. So the value of the
13 assets, which aren't static, does change. The costs aren't
14 static. They do change. The amount of the claims, the
15 denominator, was not static and would change.

16 Q Okay. And were the -- were the changes in the claims, for
17 example, changes that were all subject to public viewing, as
18 the Court ruled on 3018, as the settlement with HarbourVest
19 was announced?

20 A Well, the plan -- the terms of the plan made clear that
21 the Class 8 claims would -- would be whatever the final
22 amounts of those claims were going to be. We did resolve the
23 claims of HarbourVest and then ultimately the settlement
24 announced today, but in front of -- in front of the world, in
25 front of the Court, with a 9019 motion.

001653

Seery - Direct

167

1 Q Okay. We had finished up with some questioning about the
2 gatekeeper and the injunction provision. Do you recall that?

3 A Yes, I do.

4 Q And you had testified as to the reasons why the Debtor was
5 seeking that particular protection. Do you recall that?

6 A Yes.

7 Q In the absence of that protection, does the Debtor have
8 any concerns that interference by Mr. Dondero could adversely
9 impact the timing of the Debtor's plan?

10 A Well, that's my opinion and what I testified to before. I
11 think the -- the injunction -- the exculpation, the
12 injunction, and the gatekeeper are really critical and
13 essential elements of this plan, because we have to have the
14 ability, unfettered by litigation, particularly vexatious
15 litigation in multiple jurisdictions, we have to be able to
16 avoid that and be able to focus on monetizing the assets and
17 try to maximize value.

18 Q Is there a concern that that value would erode if
19 resources and time and attention are diverted to the
20 litigation you've just described?

21 A Absolutely. The focus of the team has to be on the
22 assets' monetization, creative ways to get the most value out
23 of those assets, and not on defending itself, trying to paper
24 up some sort of litigation defense against vexatious
25 litigation, and also spending time actually defending

001654

Seery - Direct

168

1 ourselves in various courts.

2 Q Okay. Last couple of questions. If there was no
3 gatekeeper provision in the plan, would you accept appointment
4 as the Claimant Trustee?

5 A You broke up. No which provision?

6 Q If there was no gatekeeper provision in the -- in the
7 confirmation order, would you accept the position as Claimant
8 Trustee?

9 A No, I wouldn't. Just -- just like when I came on, there
10 were -- there are some pretty essential elements that I
11 mentioned before. One is indemnification. Two is directors
12 and officers insurance. And three was a gatekeeper function.
13 I want to make sure that we're not at risk, that I'm not at
14 risk, for doing my job.

15 Q And I think you just said it, but if you were unable to
16 obtain D&O insurance, would you accept the position as
17 Claimant Trustee?

18 A No, I would not.

19 MR. MORRIS: I have no further questions, Your Honor.

20 THE COURT: All right. So, you went two hours and 34
21 minutes in total with your direct. So we'll now pass the
22 witness for cross. And the Objectors get an aggregate of two
23 hours and 34 minutes.

24 Who's going to go first?

25 MR. RUKAVINA: Your Honor, Davor Rukavina. I will.

001655

Seery - Direct

169

1 THE COURT: Okay. Go ahead.

2 MR. RUKAVINA: Mr. Vasek, if you can pull up Exhibit
3 6N, the ballot summary, Page 7 of 15 on the top.

4 MR. POMERANTZ: Mr. Morris, you're not on mute.

5 MR. MORRIS: Thank you, sir.

6 MR. RUKAVINA: Mr. Vasek, did you hear me? There it
7 is.

8 CROSS-EXAMINATION

9 BY MR. RUKAVINA:

10 Q Mr. Seery, are you familiar with this ballot tabulation
11 that was filed with the Court and that has been admitted into
12 evidence?

13 A Yes, I believe I've seen this.

14 Q Okay. And this says that 31 Class 8 creditors rejected
15 and 12 Class 8 creditors accepted the plan, correct?

16 A That's correct.

17 Q And since then, I think we've heard that Mr. Daugherty and
18 maybe two other employees have changed their vote to an
19 accept; is that correct?

20 A That's correct, yes.

21 Q Okay. Other than three, those three employees that are
22 changing, do you know of any other Class 8 creditors that are
23 changing their votes?

24 A Mr. Daugherty is not an employee.

25 Q I apologize. Other than those three Class 8 creditors

001656

1 that are changing their votes, do you know of any other ones
2 that are changing their votes?

3 A No.

4 Q Okay. You didn't tabulate the ballots, did you?

5 A No, I did not.

6 Q Do you have any reason to question the accuracy of this
7 ballot summary that's been filed with the Court?

8 A No, I do not.

9 Q Okay. You mentioned that many of the people that rejected
10 the plan are former employees who you don't think will
11 ultimately have allowed claims, correct?

12 A Not ultimately. I said they don't have them now.

13 Q Okay. Are you aware that the Court ordered that
14 contingent unliquidated claims be allowed to vote in an
15 estimated amount of one dollar?

16 A I'm aware of that, yes.

17 Q Okay. All right. Now, no motion to reconsider that order
18 has been filed, correct?

19 A Not to my knowledge.

20 Q Okay. No objection to these rejecting employees' claims
21 have been filed yet, correct?

22 A Correct.

23 Q Okay. And no motion to strike or designate their vote has
24 been filed as of now, correct?

25 A Correct.

Seery - Cross

171

1 MR. RUKAVINA: You can take down that exhibit, Mr.
2 Vasek.

3 BY MR. RUKAVINA:

4 Q Mr. Seery, the Debtor itself is a limited partnership; I
5 think you confirmed that earlier, correct?

6 A Correct.

7 Q And its sole general partner is Strand Advisors, Inc.,
8 correct?

9 A Correct.

10 Q And to your understanding, the Debtor, as a limited
11 partnership, is managed by its general partner, correct?

12 A Correct.

13 Q Okay. And Strand, that's where the independent board of
14 you, Mr. Nelms, and Mr. Dubel -- or I apologize if I'm
15 misspelling, misstating his name -- that's where the board
16 sits, at Strand, correct?

17 A Yes.

18 Q Okay. And that board has been in place since about
19 January 9, 2020?

20 A Yes.

21 Q Okay. Strand is not a debtor in bankruptcy, correct?

22 A No.

23 Q Okay. Do you have any understanding as to whether, under
24 non-bankruptcy law, a general partner is liable for the debts
25 of the limited partnership that it manages?

001658

Seery - Cross

172

1 A I do.

2 Q Okay. What's your understanding?

3 A Typically, a general partner is liable for the debts of
4 the partnership.

5 Q Okay. And under the plan, Strand itself is an exculpated
6 party and a protected party and a released party for matters
7 arising after January 9, 2020, correct?

8 A Yes.

9 Q Okay. You mentioned that you're the chief executive
10 officer and chief restructuring officer in this case for the
11 Debtor, correct?

12 A For the Debtor, yes.

13 Q Yeah. You are not a Chapter 11 trustee, right?

14 A No.

15 Q Okay. You are one of the principal authors of this plan,
16 correct?

17 A Consultant.

18 MR. MORRIS: Objection to the form of the question.

19 THE COURT: Sustained.

20 BY MR. RUKAVINA:

21 Q You are --

22 THE COURT: Sustained.

23 BY MR. RUKAVINA:

24 Q You are --

25 THE COURT: Rephrase.

001659

1 BY MR. RUKAVINA:

2 Q -- one of the principal --

3 MR. RUKAVINA: I apologize.

4 BY MR. RUKAVINA:

5 Q You had input in creating this plan, didn't you?

6 A I did, yes.

7 Q Okay. And you're familiar with the plan's provisions,
8 aren't you?

9 A Yes.

10 Q Okay. And you, of course, approve of the plan, correct?

11 A Yes.

12 Q Okay. And you are, of course, familiar generally with
13 what the property of the estate currently is, correct?

14 A Yes.

15 Q Okay. And part of the purpose of the plan, I take it, is
16 to vest that property in the Claimant Trust in some respects
17 and the Reorganized Debtor in some respects, correct?

18 A I don't -- I don't know if that's a fair characterization.
19 Some property -- maybe some property will stay with the
20 Debtor, some will be transferred directly to the Trust.

21 Q Okay. All property of the estate as it currently exists
22 will stay with the Debtor or go to the Trust, correct?

23 A Yes.

24 Q Okay. And under the plan, the Creditor Trust will be
25 responsible for payment of prepetition claims, correct?

1 A Yes.

2 Q And under the plan, the Creditor Trust will be responsible
3 for the payment of postpetition pre-confirmation claims,
4 correct?

5 A Do you mean admin claims? I don't --

6 Q Sure.

7 A I don't understand your question. I'm sorry.

8 Q Yes. We can call them admin claims.

9 A Yeah. Those -- they'll be -- they will be paid on the
10 effective date or in and around that time. So I'm not sure if
11 that's actually going to be from the Trust, but I think it's
12 actually from the Debtor, as opposed to from the Trust.

13 Q Okay. But after the creation of the Claimant Trust, --

14 A Uh-huh.

15 Q -- whatever administrative claims are not paid by that
16 time will be assumed by and paid from the Claimant Trust,
17 correct?

18 A I don't recall that specifically.

19 Q Is it your testimony that the Reorganized Debtor will be
20 obligated post-effective date of the plan to pay any admin
21 claims that are then unpaid?

22 MR. MORRIS: Objection to the form of the question.

23 THE COURT: Sustained. Rephrase.

24 BY MR. RUKAVINA:

25 Q Who pays unpaid admin claims under the plan once the plan

1 goes effective?

2 A I believe the Debtor does. The Reorganized Debtor.

3 Q Okay. The Reorganized Debtor also gets a discharge,
4 correct?

5 A Yes.

6 Q Okay. And there is no bankruptcy estate left after the
7 plan goes effective, correct?

8 MR. MORRIS: Objection to the form of the question.

9 THE COURT: Overruled.

10 MR. RUKAVINA: Your Honor, I have the right to know
11 what the objection to my question is.

12 THE COURT: I overruled.

13 MR. MORRIS: Okay.

14 THE COURT: I overruled the objection.

15 MR. RUKAVINA: Thank you.

16 BY MR. RUKAVINA:

17 Q Mr. Seery, do you remember my question?

18 A That whether there was a bankruptcy estate after the
19 effective date?

20 Q Yes.

21 A There wouldn't be a bankruptcy estate anymore, no.

22 Q Okay. Under the plan, the creditors, to the extent that
23 they have their claims allowed, the prepetition creditors,
24 they're the beneficiaries of the Claimant Trust, correct?

25 A They are some of the beneficiaries, yes.

1 Q Okay. And you would be the Trustee, I think you said, of
2 the Claimant Trust?

3 A Of the Claimant Trust, yes.

4 Q Okay. And you will have fiduciary duties to the
5 beneficiaries of the Claimant Trust, correct?

6 A I believe I have some, yes.

7 Q Okay. Well, as the Trustee, you will have some fiduciary
8 duties; you do agree with that?

9 A That's what I said, yes.

10 Q Okay. What's your understanding of what those fiduciary
11 duties to the beneficiaries of the Claimant Trust will be?

12 A I think they'll be -- they are cabined to some degree by
13 the provisions of the agreement, but generally there will be a
14 duty of care and a duty of loyalty.

15 Q Do you feel like you'll have a duty to try to maximize
16 their recoveries?

17 A That depends.

18 Q On what?

19 A My judgment on what's the -- if I'm exercising my duty of
20 care and my duty of loyalty.

21 Q Okay. But surely you'd like to, whether you have a duty
22 or not, you'd like to maximize their recoveries as Trustee,
23 wouldn't you?

24 A Yes.

25 Q Okay. Now, in addition to the beneficiaries, which I

1 believe are the Class 8 and Class 9 creditors, the plan
2 proposes to give non-vested contingent interests in the Trust
3 to certain holders of limited partnership interests, correct?

4 A Yes.

5 Q Okay. And those non-vested contingent interests would
6 only be paid and would only vest if and when all unsecured
7 creditors and subordinated creditors are paid in full, with
8 interest, correct?

9 A Yes.

10 Q Okay. And those non-vested contingent interests are a
11 property interest, although they're an inchoate property
12 interest, correct?

13 A I don't know. I think I testified in my deposition that I
14 -- I reached for inchoate, but I'm not an expert in the
15 definitions of property interests. I don't know if they're
16 too ethereal to be considered a property interest.

17 Q Okay.

18 MR. RUKAVINA: Mr. Vasek, will you please pull up Mr.
19 Seery's deposition at Page 215? And if you'll go to Page 200
20 -- can you zoom -- can you zoom that in a little bit? Mr.
21 Vasek, can you zoom on that?

22 MR. VASEK: Just a moment. There's some sort of
23 issue here.

24 MR. RUKAVINA: Okay. And then go to Page 216.
25 Scroll down to 216, please.

Seery - Cross

178

1 MR. VASEK: Okay. I can't see it, so --

2 MR. RUKAVINA: Okay. Stay, stay where you are. Go
3 down one more row.

4 BY MR. RUKAVINA:

5 Q Okay. Mr. Seery, can you see this?

6 A Yes.

7 Q Okay. So, I ask you on Line 21, "They may be a property
8 interest, but inchoate only, correct?" And you answer, "That
9 is my belief. I don't claim to be an expert on the different
10 types of property interests," --

11 MR. RUKAVINA: Mr. Vasek, can you go to the next
12 page?

13 BY MR. RUKAVINA:

14 Q (continues) "-- whether they be inchoate, reversionary,
15 ethereal. I don't claim to be an expert on the different
16 types of property interests."

17 Do you see that answer, sir?

18 A Yes.

19 Q And do you stand by your answer given on Lines 23 through
20 Line 4 of the next page?

21 A Yes.

22 Q Okay. And these non-vested contingency -- contingent
23 interests in the Claimant Trust, they may have some value in
24 the future, correct?

25 A Yes.

001665

1 MR. RUKAVINA: Okay. You can take that down, Mr.
2 Vasek.

3 BY MR. RUKAVINA:

4 Q Have you tried to see whether anyone outside this case, or
5 anyone at all, would pay anything for those unvested
6 contingent interests to the Claimant Trust?

7 A No.

8 Q Okay. Now, the Debtor is a registered investment advisor
9 under the Investment Advisers Act of 1940; is that correct?

10 A That's correct.

11 Q And under that Act, the Debtor owes a fiduciary duty to
12 the funds that it manages and to the investors of those funds,
13 correct?

14 A Clearly to the funds, and generally to the investors more
15 broadly, yes.

16 Q Okay. And would you agree that that duty compels the
17 Debtor to look for the interests of the funds and the
18 investors of those funds ahead of its own interests?

19 A Generally, but it's a much more fine line than what you're
20 describing. It means you can't -- the manager can't put its
21 own interests in front of the investors and the funds. It
22 doesn't mean that the manager subordinates its interest in the
23 -- to the investors and the funds.

24 MR. RUKAVINA: Well, Mr. Vasek, please pull up the
25 October 20th transcript at Page 233.

1 MR. MORRIS: What transcript is this?

2 MR. RUKAVINA: October 20, 2019. Mr. Vasek has the
3 docket entry.

4 MR. MORRIS: Oh, so it's the -- Your Honor, I just do
5 want to point out that Mr. Rukavina objected, in fact, to the
6 use of trial transcripts, but we'll get to that when we put on
7 our evidence, when we finish up.

8 MR. RUKAVINA: Well, Your Honor, I believe that
9 you're allowed to use a trial transcript to impeach testimony,
10 which is what I'm going to do now.

11 So, for that purpose, Mr. Vasek, if you could -- are you
12 on Page 233?

13 THE COURT: And just so the record is clear, this is
14 from October 2020, not October 2019, which is, I think, what I
15 heard. Continue.

16 MR. MORRIS: Your --

17 MR. RUKAVINA: Your Honor, I apologize, you did hear
18 that and I did make a mistake. Yes, this is at Docket 1271.

19 Mr. Vasek, if you'll scroll down, please. Okay. No, stop
20 there.

21 BY MR. RUKAVINA:

22 Q And you see on Line 16, sir, you're asked your
23 understanding, and then you answer, "Okay." "And in
24 exercising those duties, the manager, under the Advisers Act,
25 has a duty to subordinate its interests to the interests of

Seery - Cross

181

1 those investors in the CLOs, correct?" And you answer --

2 MR. RUKAVINA: Go down, Mr. Vasek.

3 BY MR. RUKAVINA:

4 Q -- "I think -- I think, generally, when you think about
5 the fiduciary duty, and I think that we -- I want to make sure
6 I'm very specific about this, is that the manager has a duty,
7 fiduciary duties -- there's a whole bunch of legal analysis of
8 what they are, but they are significant -- that the manager
9 owes to the investors. And to the extent" --

10 MR. RUKAVINA: Scroll down, please.

11 BY MR. RUKAVINA:

12 Q "And to the extent that the manager's interests would
13 somehow be -- somehow interfere with the investors' in the
14 CLO, he is supposed to -- he or she is supposed to subordinate
15 those to the benefit of the investors."

16 Did I read that accurately, Mr. Seery?

17 A You did.

18 Q Was that your testimony on October 20th last?

19 A Yes.

20 Q Okay. Are you willing to revise your testimony from a few
21 minutes ago that the manager does not have to subordinate its
22 interests to the interests of the investors?

23 A No. I think that's very similar.

24 Q Okay.

25 A You left out the part about garbled up top where I said it

001668

1 was nuanced, almost exactly what I just said. On Line 9, I
2 believe, on the prior page.

3 Q Well, I heard you say a couple of minutes ago, and maybe I
4 misunderstood because of the WebEx nature, that the manager
5 does not have to subordinate its interests to the interests of
6 the investors. Did I misheard you say that a few minutes ago?

7 A I think you misheard it. I said it's a nuanced analysis,
8 and it's -- it's pretty significant. But the manager does
9 subordinate his general interest and assures that the CLO or
10 any of the investors' interests are paramount, but he doesn't
11 subordinate every single interest.

12 For example, and I think it's in this testimony, the
13 manager, if the fund isn't doing well, doesn't just have to
14 take his fee and not get paid. He's allowed -- entitled to
15 take his fee. He doesn't subordinate every single interest of
16 his. He doesn't give up his home and his family. So it's --
17 it's a nuanced analysis. The interests of the manager are
18 subordinated to the interests of the investors and the fund.
19 I don't -- I don't disagree with anything I said there. I
20 think I'm consistent.

21 Q Okay.

22 MR. RUKAVINA: You can take that down, Mr. Vasek.

23 BY MR. RUKAVINA:

24 Q So, how do you describe, sir, the fiduciary duty that the
25 Debtor owes to the funds that it manages and to the investors

1 in those funds?

2 MR. MORRIS: Objection to the -- to the extent it
3 calls for a legal conclusion, Your Honor. I just want to make
4 sure we're -- we're asking a witness for his lay views.

5 THE COURT: Okay. I overrule the objection. He can
6 answer.

7 THE WITNESS: Yes. As a manager of a fund, the
8 manager is a fiduciary to the fund, and sometimes to the
9 investors, depending on the structure of the fund. Some funds
10 are purposely set up where the investors are actually debt-
11 holders, and their interests are much more cabined by the
12 terms of the contract, as opposed to straight equity holders.
13 But the manager has a duty to seek to maximize value of the
14 assets in the best interests of the underlying -- of the fund
15 and the underlying investors, to the extent that it can,
16 within the confines and structure of the fund.

17 BY MR. RUKAVINA:

18 Q Okay. And these duties as you just described them, they
19 would apply to the Reorganized Debtor, correct?

20 A They would apply to the Reorganized Debtor to the extent
21 that it's a manager for a fund, not, for example, with respect
22 to necessarily interests -- the inchoate interests that we
23 talked about earlier.

24 Q Sure. And I apologize, I meant just for the fund. And if
25 the manager, the Reorganized Debtor, breaches those duties,

1 then it's possible that there's going to be liability,
2 correct?

3 A It's possible.

4 Q Okay. Now, under the plan, the limited partnership
5 interests in the Reorganized Debtor will be owned by the
6 Claimant Trust, correct?

7 A Yes.

8 Q Okay. And there's a new entity called New GP, LLC that
9 will be created or already has been created, correct?

10 A Yes.

11 Q Okay. And that entity will hold the general partnership
12 interest in the Reorganized Debtor, correct?

13 A I believe that's correct.

14 Q Okay. And that entity -- that being New GP, LLC -- will
15 also be owned by the Claimant Trust, correct?

16 A Yes.

17 Q Okay. Who will manage the Reorganized Debtor?

18 A The G -- the GP will manage the Reorganized Debtor.

19 Q Okay. And will there be an officer or officers of the
20 Reorganized Debtor, or will it all be managed through the GP?

21 A It'll be managed through the GP.

22 Q Okay. And who will manage the GP?

23 A Likely, I will.

24 Q Okay. That's the current plan, that you will?

25 A I'll be the Claimant Trustee, and I believe that I'll be

1 responsible for any assets that remain in the Reorganized
2 Debtor, yes.

3 Q Okay. Right now, the Debtor is managing its own assets as
4 the Debtor-in-Possession, right?

5 A Yes.

6 Q And it is managing various funds and CLOs, right?

7 A Yes.

8 Q Okay. And right now, the Debtor is attempting to reduce
9 some of its assets to money, like the promissory notes that
10 you mentioned earlier that the Debtor filed suit on, correct?

11 A Yes.

12 Q And the Debtor is trying to reduce some of its assets to
13 money, like the promissory notes, to benefit its creditors,
14 correct?

15 A Yes.

16 Q Okay. And correct me if I'm wrong, but the Committee has
17 filed various claims and causes of action against Mr. Dondero,
18 correct?

19 A They -- they've filed some. I haven't -- I haven't looked
20 at their (indecipherable) closely, but --

21 Q Okay.

22 A -- some are preserved in the case.

23 Q You understand --

24 A In the plan. I'm sorry.

25 Q You understand that the Committee is doing that for the

1 benefit of the estate, correct?

2 A Yes.

3 Q And you understand that they're also doing that for the
4 benefit of creditors, correct?

5 A Yes.

6 Q Okay. And under the plan, just so that I'm clear, those
7 claims that the Committee has asserted will be preserved and
8 will vest in either the Claimant Trust or the Litigation Sub-
9 Trust, correct?

10 A Yes.

11 Q Okay. And under the plan, the Reorganized Debtor would
12 continue to manage its assets, correct?

13 A Yes.

14 Q And it would continue to manage the Funds and the CLOs,
15 correct?

16 A Yes.

17 Q And the Claimant Trust would attempt to liquidate and
18 distribute to its beneficiaries the assets that are
19 transferred to it, correct?

20 A Yes.

21 Q Okay. And you mentioned that the Claimant Trust will have
22 an Oversight Board comprised of five members, right?

23 A Yes.

24 Q And four of them will be the people that are currently on
25 the Committee, right?

1 A Yes.

2 Q And the fifth is David Pauker, and I think you mentioned
3 that he's independent. David Pauker is the fifth member,
4 right?

5 A Yes.

6 Q Who -- who is he?

7 A David Pauker is a very well-known professional in the
8 restructuring world. He's a long-time financial advisor in --
9 in reorganizations. He's served on numerous boards in
10 restructuring -- restructurings.

11 Q Okay. So, other than a different corporate structure and
12 the Claimant Trust, the monetization of assets for the benefit
13 of creditors would continue post-confirmation as now, correct?

14 A I -- I believe so. I'm not exactly sure what you asked
15 there.

16 Q No one is putting in any new money under the plan, are
17 they?

18 A No. No.

19 Q Okay. There's no exit financing contingent on the plan
20 being confirmed, right?

21 A You mean no exit -- the plan is not contingent on exit
22 financing. I think you just mixed up your -- your financing
23 and your plan.

24 Q I apologize. There's no exit financing in place today,
25 correct?

1 A No.

2 Q Okay. So, post-confirmation, you are basically going to
3 continue managing the CLOs and funds and trying to monetize
4 assets for creditors the same as you are today, correct?

5 A Similar, yes.

6 Q Okay. And just like the Committee has some oversight role
7 in the case, the members of the Oversight Board will have some
8 oversight role post-confirmation, correct?

9 A Yes.

10 Q Okay. You don't need anything in the plan itself to
11 enable you to continue managing the Debtor and its assets,
12 correct?

13 A I don't need anything in the plan?

14 Q Correct.

15 A I don't -- I don't understand the question. Can you
16 rephrase it?

17 Q Well, you are managing the Debtor and its assets today,
18 correct?

19 A Yes.

20 Q Okay. Nothing in the plan is going to change that,
21 correct?

22 A Well, it's going to change it a lot.

23 Q Okay. Well, with respect to you managing the Funds and
24 the CLOs, you don't need anything in the plan that you don't
25 have today to keep managing them, do you?

1 A No. The Debtor manages them, and I will -- I'm the CEO
2 and I'll be in a similar position with a different team.

3 Q Okay. And I believe you told me that you expect the
4 Debtor to administer the CLOs for two or three years, maybe?

5 A However long it takes, but we expect -- our projections
6 are that we'd be able to monetize most of the assets within
7 two years.

8 Q Does that include the CLOs?

9 A It does, yes.

10 Q Okay. Now, you're going to be the person for the
11 Reorganized Debtor in charge of managing the CLOs, correct?

12 A I'll be the person responsible for managing the
13 Reorganized Debtor. The Reorganized Debtor will be the
14 manager of the CLOs.

15 Q Okay. But the buck will stop with you at the Reorganized
16 Debtor, right?

17 A Yes.

18 Q Okay. You're going to have a team of employees and
19 outside professionals helping you, but ultimately, on behalf
20 of the Reorganized Debtor, you're going to be the one in
21 charge of managing the CLOs, correct?

22 A Yes.

23 Q Okay. That means that you'll also be making decisions as
24 to when to sell assets of the CLOs, correct?

25 A Yes.

1 Q Okay. And to be clear, the CLOs, they own their own
2 assets, whatever they are, and the Debtor just manages those
3 assets, right?

4 A Correct.

5 Q The Debtor doesn't directly own those assets, right?

6 A No.

7 Q And currently there's more than one billion dollars in CLO
8 assets that the Debtor manages?

9 A Approximately.

10 Q Yeah. And the Debtor receives fees for its services,
11 correct?

12 A Yes.

13 Q Can you generally describe how the amount of those fees is
14 calculated and paid, if you have an understanding?

15 A How the fees are calculated and paid?

16 Q Yes, sir.

17 A It's a percentage of the assets.

18 Q Assets administered or assets sold in any given time
19 period?

20 A Administered.

21 Q Okay. So the sale of CLO assets does not affect the fees
22 that the Reorganized Debtor would receive under these
23 agreements?

24 MR. MORRIS: Objection to the form of the question.

25 THE COURT: Over --

Seery - Cross

191

1 THE WITNESS: That's not correct.

2 THE COURT: Overruled.

3 BY MR. RUKAVINA:

4 Q Okay. What is not correct about that?

5 A When you sell the assets, the amount administered shrinks,
6 so you have less fees.

7 MR. RUKAVINA: Your Honor, the answer cut out at the
8 very end. You have less--?

9 THE WITNESS: Fees.

10 BY MR. RUKAVINA:

11 Q Fees? I understand. Okay. So are you saying that there
12 is a disincentive to the Reorganized Debtor to sell assets in
13 the CLOs?

14 A No.

15 Q Okay. Is there an incentive to the Reorganized Debtor to
16 sell assets in the CLOs?

17 A To do their job correctly, yes.

18 Q Okay. And the Debtor wishes to assume those contracts
19 because the Debtor will get those fees going forward and
20 there'll be a profit, even after the expenses of servicing
21 those contracts are taken out, correct?

22 A They are profitable. That's one of the reasons that we're
23 assuming, yes.

24 Q Okay. Now, over my objection, you testified that the CLOs
25 have agreed to the assumption of these contracts, right?

001678

1 A Yes.

2 Q Okay. Is there anything in the record other than your
3 testimony here today demonstrating that?

4 A I believe there is, yes.

5 Q What do you believe there is in the record other than your
6 testimony?

7 A I believe we filed a notice of assumption.

8 Q Okay. My question is a little bit different. You
9 testified that the CLOs, over my objection, have agreed to the
10 assumption. You did testify so, right?

11 A Yes.

12 Q Okay. What is there in the record, sir, from the CLOs
13 confirming that?

14 A You mean today's record?

15 Q Yes, sir.

16 A I'm the only one who's testified so far.

17 Q Okay. Are you aware of anything in the exhibits that
18 would confirm your testimony?

19 A Not that I know of.

20 Q Has there been an agreement with the CLOs that's been
21 reduced to writing?

22 A Yes.

23 Q So there is a written agreement with the CLOs providing
24 for assumption?

25 A Yes.

1 Q A signed, written agreement?

2 A No, it's -- it's email.

3 Q Okay. When was this email agreement reached?

4 A Within the last couple weeks. There's a number of back
5 and forths where that was agreed to, and I believe we filed a
6 notice of assumption.

7 MR. RUKAVINA: Mr. Vasek, if you will please pull up
8 Mr. Seery's January 29th deposition.

9 BY MR. RUKAVINA:

10 Q Mr. Seery, you remember me deposing you last Friday,
11 correct?

12 A Yes.

13 Q And you remember me asking you if there was a written
14 agreement in place with the CLOs?

15 A I don't recall specifically.

16 MR. RUKAVINA: Okay. Mr. Vasek, if you would please
17 scroll to that. Okay. Stop there.

18 BY MR. RUKAVINA:

19 Q Sir, you'll recall I also deposed you January 20th, right?

20 A Yes.

21 Q Okay. And do you remember that we had some discussion
22 regarding whether the CLOs would consent or not?

23 A Yes.

24 Q Okay. And do you remember telling me something like that
25 like you think that they will and that's still in the works on

1 January 20th?

2 A I don't recall specifically, but if you say that's what it
3 says.

4 Q Okay. Well, here I'm asking you on January 29th, Line 17,
5 "I asked you before and you didn't have anything in writing by
6 then, so let me ask now. As of today, do you have anything in
7 writing from the CLOs consenting to the assumption of those
8 management agreements?" I'm sorry. Contracts. Answer, "I
9 don't believe that I do. It could be on my email I opened. I
10 don't recall."

11 MR. RUKAVINA: Scroll down, Mr. Vasek.

12 BY MR. RUKAVINA:

13 Q Okay. Then I ask, "Do you have an understanding of
14 whether those CLOs have consented in writing to the assumption
15 of the management agreements?" And you answer, "I believe
16 they have. The actual final docs haven't been completed, but
17 I believe they have agreed in writing, yes."

18 Then I ask --

19 MR. RUKAVINA: Scroll down a little bit more.

20 BY MR. RUKAVINA:

21 Q I ask, "Do you expect the final docs to be completed
22 before Tuesday's confirmation hearing?" Answer, "I don't know
23 whether they will be done by Tuesday."

24 Did I read all of that correctly, sir?

25 A Other than your misstatement. The word was "unopened."

1 Q Thank you. So, let me ask you again today. As of today,
2 is there a written agreement that has been signed by the
3 parties providing for the assumption of the CLO agreements?

4 A When phrased the way you did, is it signed by the parties,
5 no.

6 Q Okay.

7 MR. RUKAVINA: You can take that down, Mr. Vasek.

8 BY MR. RUKAVINA:

9 Q I think -- I'm not sure if you quantified this earlier,
10 but it might help. I believe that the Reorganized Debtor
11 projects that it will generate revenue of \$8.269 million post-
12 reorganization from managing the CLO contracts, correct?

13 A It's in that neighborhood. I did not testify to that
14 earlier.

15 Q That's what I meant. And when I asked you at deposition,
16 you were able to give me an estimate of how much it would cost
17 to generate that revenue, correct?

18 A I was not?

19 Q You were? I'm sorry. Let me --

20 A Did you say I wasn't or I was?

21 Q Let me -- I apologize. Let me ask again. I talk too fast
22 and I have an accent. You have been able to give an estimate
23 of how much the Reorganized Debtor will expend to generate
24 that revenue, correct?

25 A Yes.

1 Q Okay. Do you remember what your estimate is?

2 A I -- I think it was around \$2 million a year. It was a
3 portion of our employees plus the contracts.

4 Q Okay. So, over the life of the projection at \$8.2
5 million, do you remember that you projected costs of about
6 \$3.5 to \$4 million to generate that revenue?

7 A If -- if you are representing that to me, I'd accept it.
8 Yes, that sounds about right.

9 Q Well, suffice it to say you're projecting at least \$4
10 million in net profit over the next two years for the
11 Reorganized Debtor from managing the CLO agreements, correct?

12 A Net profit is not a fair, fair way to analyze it, no.

13 Q Okay. Are you projecting any profit for the Reorganized
14 Debtor from managing the CLO agreements post-confirmation?

15 A Yes.

16 Q Okay. Do you have an estimate of what that profit is?

17 A General overview are the contracts are profitable to about
18 the tune of \$4 million over that period.

19 Q Okay. Thank you. If the Reorganized Debtor makes a
20 profit post-confirmation, is it fair to say that that would
21 then be dividended up or distributed up to the partners,
22 ultimately to the Claimant Trust?

23 A I don't think that's fair to say, no.

24 Q Okay. So, if the Reorganized Debtor makes a profit post-
25 confirmation, where does that profit go?

1 A The Reorganized Debtor -- what kind of profit? I don't
2 understand your question.

3 Q Okay. I apologize if I'm being too simplistic about it.
4 If a business, after it takes account of its expenses to
5 generate revenue, has any money left over, would that be
6 profit to you?

7 A Yes.

8 Q Okay. Do you think that the Reorganized Debtor, post-
9 confirmation, will make a profit?

10 A I don't know.

11 Q Okay. Do you think that the Reorganized Debtor, post-
12 confirmation, will lose money?

13 A I think there will be costs, and the costs will exceed the
14 -- the amount that it generates on an income basis, yes.

15 Q Okay. Thank you.

16 MR. RUKAVINA: Mr. Vasek, if you'll please pull up
17 the plan, the injunctions, and releases. 9F.

18 (Pause.)

19 BY MR. RUKAVINA:

20 Q I apologize, Mr. Seery.

21 MR. RUKAVINA: So, Mr. Vasek, if you'll go to the
22 bottom of the Page 51. Stop there.

23 BY MR. RUKAVINA:

24 Q So, I'm going to read just the first couple sentences
25 here, Mr. Seery, if you'll read it along with me. Subject --

1 this is the bottom paragraph: Subject in all respects to
2 Article 12(b), no enjoined party may commence or pursue a
3 claim or cause of action of any kind against any protected
4 party that arose or arises from or is related to the Chapter
5 11 case, the negotiation of the plan, the administration of
6 the plan, or property to be distributed under the plan, the
7 wind-down of the business of the Debtor or Reorganized Debtor.

8 I'd like to stop there. Do you see that clause there, Mr.
9 Seery, talking about the wind-down of the business of the
10 Debtor or Reorganized Debtor? Do you see that, sir?

11 A Yes.

12 Q Okay. Do I understand correctly that this provision we've
13 just read means that, upon the assumption of these CLO
14 management agreements, if the counterparties to those
15 agreements want to take any action against the Reorganized
16 Debtor, they first have to go through this channeling
17 injunction?

18 A I believe that's what it says, yes.

19 Q Okay. Because the wind-down of the business of the
20 Reorganized Debtor will include the management of these CLO
21 portfolio management agreements, correct?

22 A Yes.

23 Q Okay. As well as the management of various funds that the
24 Debtor owns, correct?

25 A Yes.

1 Q Okay. And would you agree with me that the new general
2 partner, New GP, LLC, is also a protected party under the
3 plan?

4 A I assume it is. I don't recall specifically.

5 Q I believe you discussed to some degree postpetition
6 losses. I'd like to visit a little bit about those. Since
7 January 9th, 2020, Mr. Dondero was not an officer of the
8 Debtor, correct?

9 A Correct.

10 Q And since January 9th, 2020, he was no longer a director
11 of Strand, correct?

12 A That's correct.

13 Q Since January 9th, 2020, until he was asked to resign, he
14 was an employee, correct?

15 A Yes.

16 Q And about -- I'm trying to remember. About when did he
17 resign? October something of 2020? Do you remember?

18 A I don't recall.

19 Q Okay. Do you recall if it was in October 2020?

20 A It was in the fall.

21 Q Okay. And he resigned because the independent board asked
22 him to resign, correct?

23 A Yes.

24 Q Okay. And you mentioned that the estate has had a
25 postpetition drop in the value of its assets and the assets

1 that it manages. Right?

2 A I believe I went through the estate's assets. The only
3 asset that wasn't a direct estate asset was the hundred
4 percent control of Select Equity Fund. I didn't talk about
5 the Fund assets.

6 Q Okay. Do you recall that the disclosure statement that
7 the Court approved states that, postpetition, there was a drop
8 from approximately \$566 million to \$328 million in the value
9 of Debtor assets and assets under Debtor management?

10 A Yes. That's the \$200 million I walked through earlier.

11 Q Okay. And I believe you mentioned some of it was due to
12 the pandemic, right?

13 A It certainly impacted the markets. The pandemic didn't
14 cause a specific loss. It impacted the markets and the
15 ability to work within those markets.

16 Q But you also believe that Mr. Dondero was responsible for
17 something like a hundred million dollars of these losses,
18 right?

19 A Probably more.

20 Q Okay. Mr. Dondero is not being released or exculpated for
21 that, is he?

22 A No.

23 Q And while Mr. Dondero was an employee during the period of
24 these losses, he answered to you as CEO and CRO, correct?

25 A Not during that period. I wasn't (audio gap) until later.

1 Q I'm sorry. As of January 9th, 2020, were you the CEO of
2 the Debtor?

3 A No.

4 Q When did you become the CEO of the Debtor?

5 A I believe the order was July 9th, retroactive to a date in
6 March.

7 Q July 9th, 2020?

8 A Correct.

9 Q Okay. And when did you become the CRO of the Debtor?

10 A At the same time.

11 Q Okay. So, between January and July 2020, you were one of
12 the independent directors, correct?

13 A Yes.

14 Q Okay. So, during that period of time, would Mr. Dondero
15 have answered to that independent board?

16 A Yes.

17 Q Okay. Now, if someone alleges that that independent board
18 has any liability on account of Mr. Dondero's losses, that's
19 released under this plan, isn't it?

20 A Yes.

21 Q Okay. And if someone alleges that Strand has any
22 liability on account of Mr. Dondero's losses, that's released
23 under this plan, correct?

24 A Yes.

25 Q Okay. And if someone believes that the Debtor -- that the

1 way that the Debtor has managed the CLOs or its funds
2 postpetition gives rise to a cause of action in negligence,
3 that's also released and exculpated in the plan, correct?

4 A I believe it would be. I'm not positive, but I believe it
5 would be.

6 Q Well, let's be clear. The plan does not release or
7 exculpate you or Strand or the board for willful misconduct,
8 gross negligence, fraud, or criminal conduct, correct?

9 A No, it does not.

10 Q Okay. And I'm not, just so we're clear, I'm not alleging
11 that, okay? So I want the judge to understand I'm not
12 alleging that. But the plan does release and exculpate for
13 negligence, right?

14 A Yes.

15 Q Okay. Where do you have an understanding a cause of
16 action for breach of fiduciary duty lies on the spectrum of
17 negligence all the way to criminal conduct?

18 A It's -- it's not -- generally not criminal, although I
19 suppose that breach of fiduciary duty could be criminal.
20 Typically, it's negligence, and that you would breach a duty
21 for either duty of care, duty of loyalty. But it could slide
22 to willful. And probably most of the instances where they
23 come up are where someone has done something willfully or
24 grossly negligent.

25 Q Okay. But -- and I would agree with you. But there are

1 certain breaches of fiduciary duty that are possible based on
2 simple negligence, correct?

3 A They are, and in these instances, they don't -- they don't
4 rise to actionable claims because they're indemnified by the
5 funds.

6 Q Okay. You have to explain that to me. So, the negligence
7 claim is not actionable because someone is indemnifying it?

8 A Typically, there's no way to recover because it's
9 indemnified by the fund that the investor might be in. If it
10 goes beyond that, then it wouldn't be.

11 Q Okay. So there are potential negligence breach of
12 fiduciary duty claims that might be subject to these
13 exculpations and releases that would not be indemnified?

14 A Gross negligence and willful misconduct, certainly.

15 Q Okay. Now, post-confirmation, post-confirmation, if the
16 Debtor, or the Reorganized Debtor, rather, engages in
17 negligence or any actionable conduct, that's when the
18 channeling injunction comes into play, right?

19 A I don't quite understand your question.

20 Q Okay.

21 A Can you repeat that?

22 Q Sure. To your understanding, does the channeling
23 injunction we're looking at right now -- and you can read it
24 if you need to -- does it apply to purely post-confirmation
25 alleged causes of action?

1 A It does apply to those, yes.

2 Q Okay. And it says that the Bankruptcy Court will have
3 sole and exclusive jurisdiction to determine whether a claim
4 or cause of action is colorable, and, only to the extent
5 legally permissible and as provided for in Article 11, shall
6 have jurisdiction to adjudicate the underlying colorable claim
7 or cause of action.

8 Do you see that, sir?

9 A I do.

10 Q Okay. And this -- the Bankruptcy Court's exclusive
11 jurisdiction here, that would continue after confirmation? Is
12 that the intent behind the plan?

13 A It has -- it says what it says. Will have the sole and
14 exclusive jurisdiction to determine whether a claim is
15 colorable, and then, to the extent permissible, it'll have
16 jurisdiction to adjudicate.

17 Q Okay. Nothing in this plan limits the period of the
18 Bankruptcy Court's inquiry to the pre-confirmation time frame,
19 correct?

20 A I don't believe it does, no.

21 Q Okay. Have you taken into account the potential that this
22 bankruptcy case will eventually be closed with a final decree?

23 A Have I taken that into account?

24 Q Well, do you know what a final decree in Chapter 11 is?

25 A I do.

Seery - Cross

205

1 Q Okay. So, help me understand. If there's a final decree
2 and the bankruptcy case is closed, then who do I go to,
3 because the Bankruptcy Court has exclusive jurisdiction, to
4 get this clearing injunction cleared?

5 MR. MORRIS: Objection to the form of the question,
6 Your Honor.

7 THE COURT: Sustained. Rephrase.

8 MR. RUKAVINA: Okay.

9 BY MR. RUKAVINA:

10 Q Is it the plan's intent, Mr. Seery, that this channeling
11 injunction that we just looked at would continue to apply even
12 after a point in time in which the bankruptcy case is closed?

13 A I don't believe so.

14 MR. RUKAVINA: Again, Your Honor, someone -- I heard
15 someone's phone right when he answered, and I didn't hear his
16 answer, if he could please re-answer.

17 THE WITNESS: I don't -- I don't think if the case is
18 closed that's the intention.

19 BY MR. RUKAVINA:

20 Q Okay. What about if there's a final decree entered?

21 MR. MORRIS: Objection, Your Honor. You know, the
22 document kind of speaks for itself.

23 THE COURT: Overruled. He can answer if he knows.

24 THE WITNESS: Yeah. I don't -- I don't -- I'm not
25 making a distinction between the case being closed and the

001692

Seery - Cross

206

1 final decree. I believe in both instances they'll be pretty
2 close to the same time and we'll make a judgment then as to
3 how to close the case in accordance --

4 Q Okay.

5 A -- with the rules.

6 MR. RUKAVINA: Mr. Vasek, if you'll please scroll up
7 to the beginning of this injunction. A little bit higher.
8 Right there. Right there.

9 BY MR. RUKAVINA:

10 Q The very first clause, Mr. Seery, if you'll read with me,
11 says, Upon entry of the confirmation order -- pardon me --
12 all enjoined parties are and shall be permanently enjoined on
13 and after the effective date from taking any actions to
14 interfere with the implementation or consummation of the
15 plan.

16 Do you see that, sir?

17 A I do, yes.

18 Q What does interfering with the implementation or
19 consummation of the plan mean?

20 A It means in some way taking actions to upset, distract,
21 stop, or otherwise prohibit or hurt the estate from
22 implementing or consummating the plan.

23 Q Okay. And is that intended -- is that clause we just
24 read and you described intended to be very broad?

25 A I -- I think it's -- if the words have meaning, yes, that

001693

1 it should -- it's pretty broad.

2 Q Okay. Is the Debtor not able to state with more
3 specificity what it would believe interference with the
4 implementation or consummation of the plan would mean?

5 MR. MORRIS: Objection to the form of the question.

6 THE COURT: Sustained.

7 THE WITNESS: I think it's -- I think it's --

8 THE COURT: Sustained.

9 MR. RUKAVINA: Okay.

10 THE WITNESS: I'm sorry.

11 BY MR. RUKAVINA:

12 Q Well, you just gave us four or five examples of what
13 interfering with the implementation or consummation of the
14 plan might be. Why isn't that, those four or five examples,
15 why aren't they listed here?

16 MR. MORRIS: Object to the form of the question.

17 MR. RUKAVINA: Well, Your Honor, I'll withdraw it
18 and I'll argue this at closing argument.

19 THE COURT: Okay.

20 BY MR. RUKAVINA:

21 Q When did the Committee agree to you serving as the
22 Claimant Trustee?

23 A In the late -- in the late fall. I've been contemplated
24 to be the Claimant Trustee. I'm willing to take -- if we can
25 come to an agreement. They have their options open if we

1 can't come to an agreement on compensation.

2 Q Okay. And since the Committee agreed to you being the
3 Claimant Trustee, you have reached a resolution with UBS,
4 correct?

5 A I don't think so. I think that that was before UBS, the
6 UBS resolution was reached.

7 Q I'm sorry. When did you reach the UBS resolution in
8 principle with UBS?

9 A I don't recall the exact date, but I do recall specific
10 conversations where some of the Committee members were
11 supportive. I didn't know that UBS wasn't, but I assumed
12 that some meant not all. And that was UBS, because I don't
13 think we had a deal yet.

14 Q Well, let me ask the question in a little bit of a
15 different way. Whenever the Debtor reached the agreement in
16 principle with UBS that your counsel described this morning,
17 whenever that point in time was, the Committee had already
18 agreed before that point in time to you serving as Claimant
19 Trustee, correct?

20 A I believe so, yes.

21 Q And is the answer the same with respect to the
22 HarbourVest settlement?

23 A I believe so. With HarbourVest, I believe so as well,
24 yes.

25 Q What about the Acis settlement?

Seery - Cross

209

1 A I don't believe so. I think Acis came first. I don't
2 think we settled on an agreement on Claimant Trustee until
3 after the Acis -- certainly after the Acis agreement, maybe
4 not after the Acis 9019. I just don't recall.

5 Q Okay. And the million-dollar cutoff for convenience
6 class creditors, that number was a negotiated amount with the
7 Committee, correct?

8 A Yes.

9 Q Okay. Thank you, Mr. Seery.

10 MR. RUKAVINA: Your Honor, I'll pass the witness.

11 THE COURT: All right. Just for purposes of time,
12 it's 3:00 o'clock, so you went 48 minutes.

13 Who's next?

14 MR. DRAPER: Mr. Taylor is.

15 THE COURT: All right. Mr. Taylor, go ahead.

16 MR. TAYLOR: Yes, Your Honor. At this time, what we
17 would like the Court to do, we are asking for a brief
18 continuance and to go into tomorrow, and there is a reason
19 for that and I would like to explain it.

20 Mr. Dondero has communicated an offer which we believe to
21 be a higher and better offer than what the plan analysis,
22 even in its most recent iteration that was just changed last
23 night, will yield significantly higher recoveries. Those are
24 guaranteed recoveries. There is a cash component to that
25 offer. There are some debt components, but they would be

001696

Seery - Cross

210

1 secured by substantially all of the assets of Highland.

2 We believe it's a higher and better offer, that the
3 creditors and the Creditors' Committee, Mr. Seery, who
4 obviously has been testifying all day on the stand, may have
5 heard some -- some inkling of it via a text or an email he
6 might have been able to glance at, or maybe not, because he's
7 been too busy, and that's understandable.

8 But we do believe it is a material offer. It is a real
9 offer. And for that reason, we would like to request the
10 Court's indulgence. This has gone rather fast. We believe
11 that in the event that it does not gain any traction, then we
12 could complete this confirmation hearing tomorrow, or it's
13 more than likely that we could. And therefore we would
14 request a continuance until tomorrow morning beginning at
15 9:30 so all the parties can confer, consider that offer, and
16 see if it gains any traction.

17 THE COURT: All right.

18 MR. POMERANTZ: Your -- Your --

19 THE COURT: Go ahead. Mr. Morris? Or who is going
20 to respond --

21 MR. POMERANTZ: Your --

22 THE COURT: -- to that?

23 MR. POMERANTZ: Your Honor, this is Jeff --

24 THE COURT: Mr. Pomerantz?

25 MR. POMERANTZ: This is Jeff Pomerantz. I will

001697

1 respond.

2 I think right at the beginning of the hearing, or
3 slightly after, I did receive an email from Michael Lynn
4 extending this offer. The email was also addressed to Mr.
5 Clemente. As we have told Your Honor before, if the Committee
6 is interested in continuing negotiations with Mr. Dondero, far
7 be it from us to stand in the way.

8 So what I would really ask is for Mr. Clemente to respond
9 to think if -- to see if he thinks that this offer is worthy.
10 If it's worthy and the Committee wants to consider it, we
11 would by all means support a continuance. If it is not, I
12 think this is just a last-minute delay without a reason. And
13 if there is no likelihood of that being acceptable or the
14 Committee wanting to engage, we would want to continue on.

15 THE COURT: All right. Mr. Clemente, what say you?

16 MR. CLEMENTE: Yes. Yes, Your Honor. Matt Clemente
17 on behalf of the Committee.

18 Obviously, I haven't had a chance to confer with my
19 Committee members, but there's no reason to not continue the
20 confirmation hearing today. I will be able to confer with
21 them over email, et cetera, this evening. There's simply no
22 reason to not continue going forward at this particular point
23 in time, Your Honor.

24 So, although I haven't conferred with the Committee
25 members, that would be what I would recommend to them. And so

Seery - Cross

212

1 my view, the Committee's view, I believe, would be let's
2 continue forward and we'll discuss Mr. Dondero's proposal that
3 I know came across after opening statements this morning, you
4 know, in due course. But I do not believe that a continuance
5 here is necessary or appropriate.

6 THE COURT: All right. Mr. Taylor, that request is
7 denied, so you may cross-examine.

8 MR. TAYLOR: Yes. (Pause.) I'm sorry, Your Honor.
9 I have a couple people that are in my ear. But yes, I'm ready
10 to proceed.

11 THE COURT: Okay.

12 CROSS-EXAMINATION

13 BY MR. TAYLOR:

14 Q Mr. Seery, I believe you can probably largely testify from
15 your memory of the various iterations of the plan analysis
16 versus the liquidation analysis. But to the extent that
17 you're unable to, we can certainly pull those up.

18 Mr. Seery, you put forth or Highland put forth on November
19 24th of 2020 a plan analysis versus a liquidation analysis,
20 correct?

21 A I think that's the approximate date, yes.

22 Q Okay. And do you recall what the plan analysis predicted
23 the recovery to general unsecured creditors in Class 8 would
24 be at that time?

25 A I believe it was in the 80s.

001699

Seery - Cross

213

1 Q And approximately 87.44 percent?

2 A That sounds close, yes.

3 Q Okay. And then just right before -- the evening before
4 your deposition that took place on January 29th, I believe a
5 revised plan analysis versus a liquidation analysis was
6 provided. Do you remember that?

7 A Yes.

8 Q Okay. And what was the predicted recovery to general
9 unsecured creditors under that analysis?

10 A I believe that was --

11 MR. MORRIS: Object to the form of the question. I
12 just want to make sure that we're talking about the -- and
13 maybe I misunderstood the question -- plan versus liquidation.

14 THE COURT: Okay. Could you restate --

15 MR. TAYLOR: I said plan analysis.

16 THE COURT: Plan.

17 THE WITNESS: I believe that that initially was in
18 the -- in the high 60s.

19 BY MR. TAYLOR:

20 Q It was --

21 A Might have been --

22 Q -- 62.14 percent; is that correct?

23 A Okay. Yeah. That sounds -- I'll take your
24 representation. That's fine.

25 Q Okay. And going back to the November 28th liquidation

001700

1 analysis, what did Highland believe that creditors in Class 8
2 would get under a liquidation analysis?

3 A I don't recall the -- if you just tell me, I'll -- I'll --
4 if you're reading it, I'll agree with -- because I -- from my
5 memory.

6 Q 62.6 percent? Is that correct?

7 A That sounds about right.

8 Q You would agree with me, would you not, that 62.6 cents on
9 the dollar is higher than 62.14 cents, correct?

10 A Yes.

11 Q And so at least comparing the January 28th versus -- of
12 2021 versus the November 24th of 2020, the liquidation
13 analysis actually ended up being higher than the plan
14 analysis, correct?

15 A Yes.

16 Q But there was -- there was some changes also in the plan
17 analysis. I'm sorry. There were some subsequent changes that
18 were done over the weekend that were provided on February 1st.
19 Is that correct?

20 A Yes.

21 Q Okay. And what were -- give us an overview of what those
22 changes were.

23 A What are -- what are you comparing? What would you like
24 me to compare?

25 Q Okay. The January to February plan analysis, what were

1 the changes? Why did it go up from 62.6 to 71.3?

2 A The main changes, as we discussed earlier, and maybe the
3 only major change, was the UBS claim amount, which went down
4 significantly from the earlier iteration. And then there was
5 the small change related to the RCP recovery, which was a
6 double-count.

7 Q Okay. And you talked about earlier about what assumptions
8 went into these analyses, correct?

9 A Yes.

10 Q And you said these assumptions were always done after
11 careful consideration. Is that a correct summation of what
12 you said?

13 A I think that's fair.

14 Q Okay.

15 MR. TAYLOR: Mr. Assink, could you pull up the
16 November assumptions?

17 BY MR. TAYLOR:

18 Q I believe that's coming up, Mr. Seery. The Court.

19 (Pause.)

20 MR. TAYLOR: And go down one page, please, Mr.
21 Assink. Roll up. The Assumption L.

22 BY MR. TAYLOR:

23 Q So, these are the November assumptions, correct, Mr.
24 Seery?

25 A I believe so, yes.

1 Q Okay. And what was the assumption that you made after
2 careful consideration regarding the claims for UBS and
3 HarbourVest?

4 A The plan assumes zero, that was L, for those claims.

5 Q Okay. And ultimately what did -- and I believe you just
6 announced this today and made this public today -- what is
7 UBS's claim? What are you proposing that it be allowed at?

8 A \$50 million in Class 8, and then they have a junior claim
9 as well.

10 Q Okay. And what about HarbourVest? What kind of allowed
11 claim did they end up with?

12 A \$45 million in Class 8 and a \$35 million junior claim.

13 Q So your well-reasoned assumption, carefully considered,
14 was off by \$95 million; is that correct?

15 MR. MORRIS: Objection to the form of the question.

16 THE COURT: Overruled.

17 THE WITNESS: The difference between zero and those
18 numbers is \$95 million, yes.

19 BY MR. TAYLOR:

20 Q You solicited creditors of the Highland estate based upon
21 the November plan analysis and liquidation analysis that was
22 provided and that we're looking at right now, correct?

23 A It was one of the bases, yes. It's the plan is what --
24 what we solicited votes for, not the projections.

25 Q But this was included within the disclosure statement; is

1 that correct?

2 A It's one of the bases. It was included, yes.

3 Q And this is the bases by which you believe that the best
4 interests of the creditors have been met better than a Chapter
5 7 liquidation, correct?

6 A I believe this evidences that the best interest test would
7 be satisfied, yes.

8 Q And so the record is very clear, for this Court and
9 anybody looking at the record, no solicitation was done of the
10 creditor body after the disclosure statement was sent out? No
11 updates were sent, correct?

12 A Updated projections were filed, but no solicitation was --
13 was -- there was only one solicitation. We did not resolicit.
14 That's correct.

15 Q Okay. Mr. Seery, how much are you -- after this plan, or
16 if this plan is confirmed, how much are you going to be paid
17 per month to be the Trustee?

18 A For the Trustee role, \$150,000 per month is the base.

19 Q It's a base amount? On top of that, you're going to
20 receive some sort of bonus amount, correct?

21 A There's two bonuses. There's a bonus for the bankruptcy
22 case, which I'd need Court approval for, and then I'm going to
23 seek a bonus for the Trustee work, which would be a
24 combination of myself and the team for a performance bonus.
25 That's to be negotiated.

1 To be fair, the Committee or the Oversight Group may not
2 agree to any change, in which case we would not have an
3 agreement.

4 Q And what would happen if you don't come to an agreement,
5 Mr. Seery?

6 A They would have to get a different Plan Trustee.

7 Q Okay. So it's certainly going to have to be greater than
8 zero, correct?

9 A Typically.

10 Q Is it going to be in the nature of three or four percent
11 of the sales proceeds, or have you considered that?

12 A Oh, I'm sorry. Yeah, you mean the bonus? No. I've been
13 thinking -- my apologies. I misunderstood. I thought you
14 meant any number. I haven't -- I haven't had negotiation with
15 them. I'm thinking about looking at the full recovery of the
16 team -- for the team, looking at expected performance numbers,
17 and then trying to negotiate a structure of bonus compensation
18 that would be payable to the whole team, and then allocated by
19 the CEO (garbled) which would be made.

20 Q When predicting the expenses of the Trust going forward in
21 your projections, did you build in an amount for a bonus fee?

22 A No. It wouldn't be part of the expenses. It would come
23 out at the end.

24 Q Okay. So those additional expenses are not shown in the
25 plan analysis, correct?

1 A No, they're not. It's just not going to be an expense.
2 It'll be a -- as an operating expense. It'll be an
3 expenditure at the end out of distributions.

4 Q Okay. And did you subtract those from the distributions?

5 A No.

6 Q Okay. A Chapter 7 trustee is not going to charge \$150,000
7 or more to monetize these assets, is he?

8 A No.

9 Q Have you priced how much D&O insurance is going to be on a
10 go-forward basis post-confirmation?

11 A I'm sorry. I couldn't -- couldn't hear you.

12 Q Sorry. Let me get closer to my mic. Have you priced what
13 D&O insurance is going to run the Trust on a go-forward basis
14 post-confirmation?

15 A Yes.

16 Q Okay. And what are you projecting that to run?

17 A About \$3-1/2 million.

18 Q And is that per annum for over the two-year life of this
19 plan?

20 A Well, it's the two-year projection period, not life. But
21 I expect that that's for the two-year projection period.

22 Q Okay. So approximately one point -- I'm sorry, you said
23 \$3.5 million, correct?

24 A Yes.

25 Q Okay. So, \$1.75 million per year?

1 A Yes.

2 Q On top of the minimum \$1.8 million per year that you're
3 going to be paid, correct?

4 A Well, that's -- that's the base compensation. But, again,
5 to be fair to the Oversight Committee, they haven't approved
6 it yet. So the Committee, the Committee reserves their rights
7 to negotiate a total package.

8 Q And there's going to be a Litigation Trustee, correct?

9 A Yes.

10 Q And that Litigation Trustee is going to be paid some
11 amount of compensation, correct?

12 A Yes.

13 Q That has not been negotiated yet, correct?

14 A No, I believe -- I believe the base piece has. But his --
15 I don't know what the contingency fee or if that's been
16 negotiated yet. I don't know.

17 Q And what is the base fee for the Litigation Trustee?

18 A My recollection is it was about \$250,000 a year, some
19 number in that area.

20 Q Thank you. So, at this point, over the two-year period,
21 we're looking at approximately \$3.6 million to you, \$3.5
22 million to the D&O insurance, and approximately \$500,000 base
23 fee to the Litigation Trustee, plus a contingency. Is that
24 correct?

25 A That's probably real close, yes.

1 Q Okay. And how about U.S. Trustee fees? You've estimated
2 of how much those are going to be during the two-year period,
3 correct?

4 A They're built into the plan up 'til -- I think it's only
5 up until the actual effective date, but I don't recall the
6 specifics.

7 Q Okay. And U.S. Trustee fees, the case is going to stay
8 open and those are going to continue to have to be paid, even
9 after confirmation, correct?

10 A Yes.

11 Q Okay. And do you have an estimate of how much those are
12 going to run per annum or over that two-year period?

13 A I don't recall, no.

14 Q Okay. Well, they're provided within your projections,
15 correct?

16 A Yes.

17 Q Okay. A Chapter 7 trustee would not have to incur any of
18 these costs, would they?

19 A I don't think they'll have to incur Chapter -- U.S.
20 Trustee fees. I don't know whether they would bring on a
21 litigation trustee or not. I would assume, since there's --
22 appear to be valuable claims, they probably would, but perhaps
23 they would do it themselves. So I don't know the specifics of
24 what they would do.

25 Q In preparing your liquidation analysis, did you ask

1 Pachulski if they would be willing to work for a Chapter 7
2 trustee if one was appointed?

3 A I didn't specifically ask, no.

4 Q Did you ask DIS, your, for lack of a better word,
5 financial advisors in this case, if they would be willing to
6 work with a Chapter 7 trustee?

7 A DSI. No, I did not specifically ask them.

8 Q Okay. All right. Any of the accountants that you're
9 working with, did you ask them if they would be willing to
10 work with a Chapter 7 trustee?

11 A I didn't specifically ask them, no.

12 Q Okay. The proposed plan has no requirements that you
13 notice any potential sale of either Highland assets or
14 Highland subsidiary assets; is that correct?

15 A Do you mean after the effective date?

16 Q Yes.

17 A No, it does not.

18 Q In the SSP sale, which is a subsidiary of Trussway, which
19 is a subsidiary of Highland, or actually it's a sub of a sub
20 of Highland, you conducted the sale of SSP, correct?

21 A The team did, yes. I was part.

22 Q All right. That was not noticed to the creditor body; is
23 that correct?

24 A That's correct.

25 Q And it is the Debtor's and your position that no notice

1 was required because this was a sub of a sub and therefore
2 this was in the ordinary course?

3 A Not exactly, no.

4 Q Okay. Then what is your position?

5 A It was in the ordinary course. It was -- I believe it's a
6 sub of a sub of a sub, and a significant portion of the
7 interests are owned by third parties.

8 Q It is possible, is it not, that had you noticed this to
9 the larger creditor body, that you might have engendered a
10 competitive bidding situation that might have reached a higher
11 return for investors, correct?

12 A The same possibility is it could have gone lower.

13 Q But it is possible, correct?

14 A Certainly possible.

15 Q In fact, there is normally requirements under the
16 Bankruptcy Code and the Rules that asset sales are noticed out
17 to the creditor body, correct?

18 A Asset sales that -- property of the estate, yes. Other
19 than in the ordinary course, of course.

20 Q I believe you have described Mr. Dondero as being very
21 litigious within this case; is that correct?

22 A I believe so, yes.

23 Q Okay. Did Mr. Dondero initiate any litigation in this
24 case prior to September 2020?

25 A Prior to September? I don't believe so. I don't know

Seery - Cross

224

1 when he filed the claim from NexPoint. It certainly indicated
2 that -- I believe it was from NexPoint. My memory is slightly
3 off here. He filed a claim in -- administrative claim, which
4 effectively is like you're bringing a complaint, against HCMLP
5 for the management of Multi-Strat and the sale of the life
6 settlement policies out of Multi-Strat, which was conducted in
7 the spring.

8 Q And wasn't Mr. Dondero seeking document production related
9 to that sale?

10 A No.

11 Q Okay. I believe that the preliminary injunction that you
12 talked about and were questioned earlier, the plan asks to
13 enjoin (garbled) party from allowing the plan to go effective.
14 Is that correct?

15 A I'm sorry. I didn't understand your question. There was a
16 -- there was a bunch of interference.

17 Q Okay. Sure. I'm sorry about that. I don't know if
18 that's -- I don't think that's me, but --

19 A It may not be. It sounded like someone else.

20 Q The injunction prohibits anybody from interfering with the
21 plan going effective, correct?

22 A The plan injunction?

23 Q Yes.

24 A Yes.

25 Q Okay. Just so I'm clear, is the plan injunction

001711

1 attempting to strip appellate rights of Mr. Dondero?

2 A No.

3 Q Okay. So, if, for instance, if he were to file any appeal
4 of an order confirming this plan, he wouldn't be in violation
5 of that plan injunction?

6 A I don't think so, because the order wouldn't be final.

7 Q Okay. But it -- it says upon entry of a confirmation
8 order, you're enjoined from doing so. So that's not the
9 intent?

10 A It certainly would not be my intent. I don't think that
11 anybody had that in mind.

12 Q Okay. And if Mr. Dondero were to seek a stay pending
13 appeal either during that 14-day period or afterwards, is that
14 plan injunction attempting to stop that -- that sort of
15 action?

16 A I apologize. You're breaking up. But I think I
17 understood your question. No, it was -- it was your screen as
18 well. No. If either this Court stays its own order or a
19 higher court says that the order is stayed, then there would
20 be no way there could be any allegation that it's interfering
21 with an order if it's not effective.

22 Q Mr. Dondero opposed the Acis sale, correct?

23 A The Acis settlement?

24 Q Correct.

25 A Yes.

1 Q After he opposed the Acis settlement, the next filing Mr.
2 Dondero made was requesting that the Debtor notice the sale of
3 any assets or any major subsidiary assets. Is that correct?

4 A I don't recall the sequence of his filings. I think that
5 Judge Lynn at least sent a letter to that effect. I don't
6 recall if there is a filing to that effect.

7 Q Did Mr. Dondero, through his counsel, attempt to resolve
8 that motion without filing anything further?

9 A I don't recall the specifics of the motion. I know they
10 asked for some sort of relief that -- that we thought was
11 inappropriate.

12 Q When the Court postponed any hearing on Mr. Dondero's
13 request for relief until the eve of the confirmation hearing,
14 and Mr. Pomerantz announced that no sales were expected before
15 confirmation, did Mr. Dondero withdraw his motion?

16 A Again, I don't recall the specifics of the motion. I only
17 recall the letter from Judge Lynn.

18 Q Did Mr. Dondero do anything more than object to the
19 HarbourVest deal?

20 A Not that I know of.

21 Q Did Mr. Dondero do anything more than respond to the
22 Defendants' injunction suit?

23 MR. MORRIS: Objection to the form of the question.
24 I mean, -- objection to the form.

25 THE COURT: Overruled.

Seery - Cross

227

1 MR. TAYLOR: I apologize. I should have said the
2 Debtor's injunction suit.

3 THE WITNESS: Yeah, the -- I'm not sure of the
4 specific order, but certainly the communications with me,
5 which I think are prior to the order. The communications with
6 Mr. Surgent, which I believe are after the order. Certain
7 communications with Mr. Waterhouse, which were oral. Those
8 were all similarly difficult and obstreperous actions.

9 BY MR. TAYLOR:

10 Q Has Mr. Dondero commenced any adversary proceeding or
11 litigation in this case other than filing a competing plan?

12 MR. MORRIS: Objection to the form of the question.

13 THE COURT: Over --

14 THE WITNESS: Yeah, I don't --

15 THE COURT: -- ruled.

16 THE WITNESS: I don't believe he's commenced an
17 adversary. I'm sorry, Judge. I don't believe he's commenced
18 an adversary proceeding, no.

19 BY MR. TAYLOR:

20 Q Mr. Dondero didn't file any opposition to the life
21 settlement sale, did he?

22 A We didn't do the life settlement (garbled) Court.

23 Q Right. Again, that wasn't noticed through the -- this
24 Court, was it?

25 A It was an -- the reason was it was an asset of Multi-Strat

001714

1 Fund. It wasn't an asset of the Debtor's.

2 Q Okay. Mr. Dondero did have concerns regarding the life
3 settlement sale, correct?

4 A Yes.

5 Q In fact, he believed that they were being sold for
6 substantially less than what could have otherwise been
7 received, correct?

8 A He may have.

9 Q And if you conduct any subsequent sales for less than
10 market value that might ultimately prevent the waterfall from
11 ever reaching Mr. Dondero, he would have no recourse under
12 this proposed plan to object to this sale or otherwise have
13 any comment on it. Is that correct?

14 A I clearly object to the thinking that that was less than
15 market value. It was -- it was more than market value. So I
16 don't -- I disagree with the premise of your question.

17 Q So, I don't believe that was the question that was asked.
18 The question that was asked is, as you move forward with your
19 -- what I will characterize as a wind-down plan, not putting
20 that word in your mouth -- but as you execute forward on your
21 plan, as these sales of these assets go through, no notice is
22 going to be provided, correct?

23 A Not necessarily. It depends on the asset and what we
24 think of the, you know, the -- the position of the parties at
25 the time.

1 If we have a -- if we have a transaction that's pending
2 that wouldn't be hurt by a notice and that we'd be able to get
3 the Court's imprimatur to maybe more better insulate, if you
4 will, against Mr. Dondero's attacks, then we may well come to
5 the Court to seek that.

6 The problem with noticing sales is that -- that it often
7 depresses value. That's just not the way folks outside of the
8 bankruptcy world (audio gap) sales.

9 Q So there's no requirement that either public or private
10 notice be provided, correct?

11 A No. Meaning it is correct.

12 Q Okay. And if Mr. Dondero had objections either to the
13 pricing of the sale or the manner and means by which the sale
14 was being conducted, he would be prohibited by the plan
15 injunction from bringing any objection to such sale, correct?

16 A I believe so, yes.

17 Q Mr. Dondero also had concerns regarding the OmniMax sale,
18 correct?

19 A Mr. Dondero did not go along with the OmniMax sale with
20 the assets that he managed. I don't know if he had concerns
21 with -- with our sale or OmniMax's interests.

22 Q Did Mr. Dondero ever express to you any concern that the
23 value wasn't being maximized regarding the sale of those
24 assets?

25 A He thought he could get more. I don't know that he

1 thought that he could get more for his assets that he was
2 managing or whether he thought he could get more for all of
3 the assets.

4 Q Other than voicing those concerns, did Mr. Dondero file
5 any pleading with this Court attempting to block that sale?

6 A Pleading with the Court? No.

7 MR. TAYLOR: Your Honor, I would like to confer with
8 my colleagues just very briefly and see if they have anything
9 further. And even if they don't, Mr. Lynn of my firm would
10 like a very brief moment to address the Court prior to me
11 passing the witness.

12 So, if I may have a literally hopefully one-minute break
13 where I can turn my camera off and my microphone off to confer
14 with my colleagues, and then move forward?

15 THE COURT: Okay. Well, you can have a one-minute
16 break, but we're going to continue on with cross-examination
17 at this point. Okay? I'm not sure what you meant by Mr. Lynn
18 wants to raise an issue at this point. Could you elaborate?

19 MR. TAYLOR: I will get some elaboration during our
20 30-second to one-minute break, Your Honor. I was just passed
21 a note.

22 THE COURT: All right. So, but I'll just you know,
23 --

24 A VOICE: Your Honor?

25 THE COURT: -- I'm inclined to continue with the

1 cross-examination. You know, this isn't a time for, you know,
2 arguments or anything like that. All right?

3 So, we'll take a one-minute break. You can turn off your
4 audio and video for one minute, and come back.

5 (Off the record, 3:33 p.m. to 3:34 p.m.)

6 THE WITNESS: Your Honor?

7 THE COURT: Yes?

8 THE WITNESS: It's Jim Seery. Can I turn it into
9 just a two-minute break, since I've sat in my seat, and it
10 would be better for him to just continue straight through. I
11 could use one or two minutes.

12 THE COURT: Okay.

13 THE WITNESS: I apologize.

14 THE COURT: All right. Well, it's been more than
15 minute. Let's just say a five-minute break for everyone, and
16 we'll come back at 3:39 Central time. Okay.

17 THE WITNESS: Okay. Thank you, Your Honor. I
18 appreciate that.

19 (A recess ensued from 3:35 p.m. until 3:40 p.m.)

20 THE CLERK: All rise.

21 THE COURT: Please be seated. All right. We are
22 back on the record. Mr. Taylor, are you there?

23 MR. TAYLOR: I am, Your Honor. My video is not
24 wanting to start, but my -- I believe my audio is on.

25 THE COURT: Okay. After you went offline for your

Seery - Cross

232

1 one-minute break, Mr. Seery asked for a five-minute bathroom
2 break, or a couple-minute. Anyway, we've been gone on a
3 bathroom break. We're back now.

4 MR. TAYLOR: Thank you. I was actually -- I was
5 still listening with one ear, --

6 THE COURT: Okay.

7 MR. TAYLOR: -- Your Honor, so I understand.

8 THE COURT: All right.

9 MR. TAYLOR: So, thank you.

10 THE COURT: Are you finished with cross, or no?

11 MR. TAYLOR: Just a little bit of a follow-up.

12 CROSS-EXAMINATION, RESUMED

13 BY MR. TAYLOR:

14 Q Mr. Seery, you had previously testified that Mr. Dondero's
15 counsel had threatened you and/or the independent board, I was
16 not exactly sure who you were referring to, with suits, and I
17 believe you said a hundred million dollars' worth of suits and
18 getting dragged into litigation.

19 Is that still your testimony today, that you were -- you
20 were threatened with suit by this firm of a suit of over a
21 hundred million dollars?

22 A I believe what I was told by my counsel was that, not Mr.
23 Dondero's, but one of the other counsel, who I can name, said
24 specifically that Dondero will sue Seery for hundreds of
25 millions of dollars. We're going to take it up to the Fifth

001719

Seery - Cross

233

1 Circuit, get it reversed, and he'll go after him.

2 Q Okay. So it was not Mr. Dondero's counsel, and you were
3 not -- is that correct?

4 A No. It was one of the other counsel on the phone today.

5 Q Okay. And you base that not upon your own personal
6 knowledge but based on some -- something else that you were
7 told, correct?

8 A Yes. By my counsel.

9 Q Thank you.

10 MR. TAYLOR: Yes, Your Honor. We can pass the
11 witness.

12 THE COURT: Okay. So, you've gone, or you and Mr.
13 Rukavina collectively have gone one hour and 17 minutes. Mr.
14 Draper, you're next.

15 MR. DRAPER: Yes, Your Honor. Thank you. I
16 basically have no more than ten questions, so I gather the
17 Court will welcome that.

18 THE COURT: Okay.

19 CROSS-EXAMINATION

20 BY MR. DRAPER:

21 Q Mr. Seery, has the new general partner been formed yet?

22 A I don't know if they've been -- we've actually done the
23 formation, but it -- it would be in process.

24 Q So it either has been formed or has not been formed?

25 A I don't -- I don't know the answer.

001720

1 Q Okay. Now, going forward, Judge Nelms and Mr. Dubel will
2 have nothing to do with the Reorganized Debtor, correct?

3 A Not necessarily, but they don't have a specific role at
4 this time.

5 Q They won't be officers or directors of the new general
6 partner or the Reorganized Debtor, correct?

7 A I don't -- I don't believe so, but it's not set in stone.

8 Q All right. Has any finance -- has any party who is the
9 beneficiary of an exculpation, a release, or the channeling
10 injunction contributed anything to this plan of reorganization
11 in terms of money?

12 A No.

13 Q Have you ever interviewed a trustee as to how they would
14 liquidate the assets or monetize the assets in this case?

15 A No.

16 Q And last question is, is there any bankruptcy prohibition
17 that you're aware of that a Chapter 7 trustee could not do
18 what you're doing?

19 A Which -- which -- what do you mean, under the plan?

20 Q No. Could not monetize the assets of the estate in the
21 manner that you're attempting to monetize them.

22 A I don't think there's a specific rule, but I just haven't
23 -- I haven't seen that before, no. So I don't think there's a
24 specific rule that I know of.

25 Q Okay.

Seery - Cross

235

1 MR. DRAPER: I have nothing further for this witness.

2 THE COURT: All right. I should have asked, we had a
3 couple of other objectors. Ms. Drawhorn, did you have any
4 questions?

5 MS. DRAWHORN: I have no questions, Your Honor.

6 THE COURT: All right. Were there any other
7 objectors out there that I missed that might have questions?

8 All right. Any redirect?

9 MR. MORRIS: Your Honor, if I may, can I -- can I
10 just take a short minute to confer with my colleagues?

11 THE COURT: Sure. You can --

12 MR. MORRIS: Thank you.

13 THE COURT: -- put you --

14 MR. MORRIS: Two -- two minutes, Your Honor.

15 THE COURT: Okay.

16 (Pause, 3:45 p.m. until 3:48 p.m.)

17 THE COURT: All right. We've been a couple of
18 minutes. Mr. Morris?

19 MR. MORRIS: Yes, Your Honor.

20 THE COURT: What are --

21 MR. MORRIS: Just, just a few points, Your Honor.

22 THE COURT: Okay.

23 MR. MORRIS: Hold on a sec. You ready, Mr. Seery?

24 THE WITNESS: I am, yes.

25 REDIRECT EXAMINATION

001722

1 BY MR. MORRIS:

2 Q You were asked a number of questions about your
3 compensation. Do you recall all that?

4 A Yes, I do.

5 Q And you testified to the \$150,000 a month. Do you recall
6 that?

7 A Yes.

8 Q Under the -- under the documentation right now, your
9 compensation is still subject to negotiation with the
10 Committee; is that right?

11 A Yes, it is.

12 Q Okay. You were asked a couple of questions about the
13 conduct of Mr. Dondero. Earlier, you testified that the
14 monetization plan was filed under seal at around the time of
15 the mediation. Do I have that right?

16 A Yes. Right at the start of the mediation.

17 Q Okay. And is that the first time that the Debtor made the
18 constituents aware, including Mr. Dondero, that it intended to
19 use that as a catalyst towards getting to a plan?

20 A That's the first time that we filed it, but that plan had
21 been discussed prior to that.

22 Q And do you recall that there came a point in time where
23 you -- when the Debtor gave notice that it intended to
24 terminate the shared services agreements with the Dondero-
25 related entities?

1 A Yes.

2 Q And when did that happen?

3 A That was about 60 -- now it's like 62 days ago.

4 Q Uh-huh. And you know, from your perspective, from the
5 filing of the monetization plan in August through the notice
6 of shared services, is that what you believe has contributed
7 to the resistance by Mr. Dondero to the Debtor's pursuit of
8 this plan?

9 A Well, I think there's a number of factors that
10 contributed, but the evidence that I've seen is that when we
11 started talking about a transition, if there wasn't going to
12 be a deal, if Mr. Dondero couldn't reach a deal with the
13 creditors, we were going to push forward with the monetization
14 plan. And the monetization plan required the transition of
15 the employees. And indeed, it called specifically, and we had
16 testimony regarding it all through the case, about the
17 employees being terminated or transferred.

18 In order to transfer them over to an entity that's
19 related, Mr. Dondero pulls all of those strings. And he
20 refused to engage on that. We started in the fall. We
21 specifically told employees of the Debtor not to engage. They
22 couldn't spend his money, which made sense --

23 MR. TAYLOR: Objection, Your Honor.

24 THE WITNESS: So, very -- that --

25 THE COURT: Just -- there's an objection.

Seery - Redirect

238

1 MR. MORRIS: There's an objection.

2 THE WITNESS: I'm sorry.

3 THE COURT: There was an objection.

4 MR. TAYLOR: Yes, Your Honor. Object --

5 THE COURT: Go ahead.

6 MR. TAYLOR: Yes, Your Honor. This is Clay, Clay
7 Taylor. Objection. He's directly said Mr. Dondero told other
8 employees x, and that is purely hearsay, not based upon his
9 personal opinion, or his personal knowledge, and therefore
10 that part of the answer should be struck.

11 MR. MORRIS: Your Honor, it's a statement against
12 interest.

13 THE COURT: Overrule the objection. Go ahead.

14 THE WITNESS: Yeah. The difficulty of transitioning
15 this business, I've equated it to doing a corporate carve-out
16 transaction on an M&A side. It's hard, and you need
17 counterparties on the other side willing to engage. And what
18 we went through over the weekend, on Friday, was seemingly
19 that the Funds, you know, directed by Mr. Dondero, just
20 haven't engaged.

21 We actually gave them an extra two weeks to engage,
22 because it's -- they've really been unable to do anything. I
23 mean, hopefully, we've got the employees working in a way that
24 can -- that can foster and get around some of this
25 obstreperousness, and I've used that word before, but that's

001725

1 what it is. It's really an attempt to just prevent the plan
2 from going forward.

3 And at some point, the plan will go forward. And if we
4 are unable to transition people, we will simply have to
5 terminate them. And that is not a good outcome for those
6 employees, but it's not a good outcome for the Funds, either.
7 And the Funds, Mr. Dondero, the Advisors, the boards, nobody
8 wants to do anything except come in this court.

9 BY MR. MORRIS:

10 Q Do you recall being asked about Mr. Dondero and certain
11 things that he didn't do and certain actions that he hadn't
12 taken?

13 A Yes.

14 Q By Mr. Taylor? To the best of your recollection, did Mr.
15 Dondero personally object to the HarbourVest settlement?

16 A I -- I don't recall if he did or if it was one of the
17 entities.

18 Q It was Dugaboy. Does that refresh your recollection?

19 A Dugaboy certainly objected, yes.

20 Q And do you understand that Dugaboy has appealed the
21 granting of the 9019 order in the HarbourVest settlement?

22 A Yes.

23 Q And Mr. Taylor asked you to confirm that Mr. Dondero
24 hadn't taken any action with respect to the life settlement
25 deal. Do you remember that?

1 A I do.

2 Q But are you aware that Dugaboy actually filed an
3 administrative claim relating to the alleged mismanagement of
4 the life settlement sale?

5 A Yes, I did, I did allude to that. I wasn't sure it was
6 Dugaboy, but -- but that was very --

7 Q Uh-huh.

8 A -- very early on, an objection filed in the form of an
9 administrative claim or complaint against, if you will,
10 against Highland for the management of Multi-Strat.

11 Q Uh-huh. And Mr. Dondero didn't personally file any motion
12 seeking to inhibit the Debtor from managing the CLO assets; is
13 that right?

14 A No, not the CLO assets, no.

15 Q Yeah. But the Funds and the Advisors did. That was the
16 hearing on December 16th. Do you recall that?

17 A Yeah. That was the -- the Funds. K&L Gates, the Funds,
18 and the various Advisors.

19 Q All right. Do you recall Mr. Rukavina asking you whether
20 there was any evidence in the record to support your testimony
21 that there was an agreement in place to assume the CLO
22 management agreements?

23 A I recall the question, yes.

24 Q Okay.

25 MR. MORRIS: Your Honor, I'm going to ask Ms. Canty

Seery - Redirect

241

1 to put up on the screen the Debtor's omnibus reply to the plan
2 objections.

3 THE COURT: Okay.

4 MR. MORRIS: It was filed -- it was filed on January
5 22nd. And if we can go, I think, to -- I think it's Paragraph
6 -- I think it's Paragraph 135 on Page 71. Yeah. Okay.

7 BY MR. MORRIS:

8 Q Take a look at that, Mr. Seery. Does that -- does that
9 statement in Paragraph 135 accurately reflect the
10 understanding that's been reached between the Debtor and the
11 CLO Issuers with respect to the Debtor's assumption of the CLO
12 management agreements?

13 A Yes. I think that's consistent with what I testified to
14 earlier, the substance of the agreement.

15 MR. MORRIS: And if we can just scroll to the top,
16 just to see the date. Or the bottom. I guess the top.

17 THE WITNESS: Do you mean the date of this pleading?

18 BY MR. MORRIS:

19 Q Yeah. So, it was filed on January 22nd, right, ten days
20 ago? Okay.

21 A That's correct.

22 MR. MORRIS: I'd like to put up on the screen an
23 email, Your Honor, that I'd like to mark as Debtor's Exhibit
24 10A. And this is --

25 BY MR. MORRIS:

001728

1 Q Do you recall, Mr. Seery, you testified that the agreement
2 was reflected in an email?

3 A Yes.

4 Q Is this the email that you're referring to?

5 MR. MORRIS: If we could scroll down. Right there.

6 THE WITNESS: Yes.

7 MR. MORRIS: Okay. One -- the email below. Okay.

8 Right there.

9 BY MR. MORRIS:

10 Q Is that the -- is that the email you had in mind?

11 A It was the series of emails. We -- we had a -- I think I
12 testified in the prior testimony, or my -- one of my
13 depositions, that we had had a number of conversations with
14 the Issuers and their counsel, and this was the summary of the
15 agreement that was contained in these emails.

16 Q Okay. And this is, this is the same date as the omnibus
17 reply that we just looked at, right, January 22nd?

18 A That's correct.

19 Q Okay. You were asked a question, I think, late in your
20 cross-examination about a Chapter 7 trustee's ability to sell
21 the assets in the same way as you are proposing to do. Do you
22 recall that testimony?

23 A Yes.

24 Q And I think, if I understood correctly, the question was
25 narrowly tailored to whether there was any legal impediment to

1 a trustee doing -- performing the same functions as you. Do I
2 have that right?

3 A That's the question I was asked, whether the Bankruptcy
4 Code had a specific prohibition.

5 Q Okay. And I think, I think you testified that you weren't
6 aware of anything. Is that right?

7 A That's correct.

8 Q All right. But let's talk about practice. Do you think a
9 Chapter 7 trustee will realize the same value as you and the
10 team that you're assembling will, in terms of maximizing value
11 and getting the maximum recovery for the assets?

12 A No. As I testified earlier, you know, I've been working
13 with these assets now for a year. It's a complicated
14 structure. The assets are all slightly different. And
15 sometimes much more than slightly. And the team that we're
16 going to have helping managing is familiar with the assets as
17 well. We believe we'll be able to execute very well in the
18 markets that we (garbled).

19 Q Do you think a Chapter 7 trustee will have a steep
20 learning curve in trying to even begin to understand the
21 nature of the assets and how to market and sell them?

22 A I think anybody coming into this, the way this company is
23 set up, as an asset manager, and the diversity of the assets,
24 would have a steep learning curve, yes.

25 Q Do you have any view as to whether the perception in the

1 marketplace of a Chapter 7 trustee taking over to sell the
2 assets will have an impact on value as compared to a post-
3 confirmation estate of the type that's being proposed under
4 the plan?

5 A Yes, I do, and it certainly would be negative, in my
6 experience. Typically, assets are not conducted -- asset
7 sales are not conducted through a bankruptcy court, and
8 certainly not with a Chapter 7 trustee that has to sell them,
9 and generally is viewed as having to sell them quickly. So we
10 -- we approach each asset differently, but certainly in a way
11 that would be much more conducive to maximizing value than a
12 Chapter 7 trustee could, just by the nature of their role.

13 Q Is it -- is it your understanding that, under the proposed
14 plan and under the proposed corporate governance structure,
15 that the Claims Oversight Committee will -- will manage you?
16 That you'll report to that Committee and that they'll have the
17 opportunity to make their assessment as to the quality of your
18 work?

19 A Yeah, absolutely. And that's consistent with what we've
20 done before in this case. Even where it wasn't an asset of
21 the estate or was being sold in the ordinary course, we spent
22 time with the Committee and the Committee professionals before
23 selling assets.

24 Q And you've worked with the Committee for over -- for a
25 year now, right?

1 A It's over a year.

2 Q And the Committee is comfortable with you taking this
3 role; is that right?

4 A I think they're supportive of it. Comfortable might be
5 not the right word choice.

6 Q Okay. I appreciate the clarification. And do you have
7 any reason to believe that the -- that the Oversight Committee
8 is going to allow you the unfettered discretion to do whatever
9 you want with the assets of the Trust?

10 A Not a chance. Not with this group. Nor would I want to.
11 There's no right or wrong answer for most of these things, and
12 the collaborative views from professionals and people who have
13 an economic stake in the outcome will be helpful.

14 Q Okay. You were asked some questions about the November
15 projections and the -- and the assumption that was made that
16 valued the HarbourVest and the UBS claims at zero. Do you
17 recall that?

18 A Yes.

19 Q As of that time, was the Debtor still in active litigation
20 with both of those claim holders?

21 A Very much so.

22 Q And after the disclosure statement was issued, do you
23 recall that the Court entered its order on UBS's Rule 3018
24 motion?

25 A Yes.

Seery - Redirect

246

1 Q And do you recall what the -- what the claims estimate was
2 for voting purposes under that order?

3 A It was about \$95 million. That was -- it was together
4 with the summary judgment orders of that date. They were
5 separate orders, but that was the lone hearing.

6 Q And was that public information, that order was publicly
7 filed on the docket; isn't that right?

8 A Yes, it was.

9 Q Is there anything in the world that you can think of that
10 would have prevented any claim holder from doing the math to
11 try to figure out the impact on the estimated recoveries from
12 the -- by using that 3018 claims estimate?

13 A No. It would have -- it would have been quite easy to do.

14 Q And, in fact, that's what you wound up doing with respect
15 to the January projections, right?

16 A That's correct.

17 Q And do you recall when the HarbourVest settlement, when
18 the 9019 motion was filed?

19 A I don't recall the actual filing. It was subsequent to
20 the UBS, though.

21 MR. MORRIS: Ms. Canty, if you have it, can we just
22 put it on the screen, to see if we can refresh Mr. Seery's
23 recollection? If we could just look at the very top.

24 BY MR. MORRIS:

25 Q Does that refresh your recollection that the 9019 motion

001733

1 was filed on December 23rd?

2 A Yes, it does. The agreement was reached before that, but
3 it took a little bit of time to document the particulars and
4 then to -- to get it filed.

5 Q And this wasn't filed under seal, to the best of your
6 recollection, was it?

7 A No, no. This was -- this was open, and we had a very open
8 hearing about it, because it was a related-party objection.

9 Q And to the best of your recollection, did this 9019 motion
10 publicly disclose all of the material terms of the proposed
11 settlement?

12 A Yes, it did.

13 Q Can you think of anything in the world that would have
14 prevented any interested party from doing the math to figure
15 out how this particular settlement would impact the claim
16 recoveries set forth in the Debtor's disclosure statement?

17 A No. And just again, to be clear, the plan and the
18 projections had assumptions, but the plan was very clear that
19 the denominator was going to be determined by the total amount
20 of allowed claims.

21 Q And, again, at the time that that was filed, you hadn't
22 reached a settlement with HarbourVest, had you?

23 A No.

24 Q And the order on the 3018 motion hadn't yet been filed; is
25 that right?

1 A That's correct.

2 Q Okay. Has -- are you aware of any creditor expressing any
3 interest in trying to change their vote as a result of the
4 updates of the forecasts?

5 A Only Mr. Daugherty. And actually, they have a stipulation
6 with the two -- the two former employees.

7 Q All right. But to be fair, that wasn't -- had nothing to
8 do with the revisions to the projections? That was just in
9 connection with their settlement; is that right?

10 A That's correct. As was, I suspect, Mr. Daugherty's, but
11 he'd been aware of the settlements, just like everyone else.

12 Q Okay. You were asked a couple of questions, I think, by
13 Mr. Rukavina about whether there is anything that you need to
14 do your job on a go-forward basis. And I think you said no.
15 Do I -- do I have that right? Nothing further that you need?

16 A I -- I'm not really sure what your question means, to be
17 honest.

18 Q Okay. Fair enough. To be clear, is there any chance that
19 you would accept the position as the Claimant Trustee if the
20 gatekeeper and injunction provisions of the proposed plan were
21 extracted from those documents?

22 A No. As I said earlier, they're integral in my view to the
23 entire plan, but they're absolutely essential to my bottom.

24 Q Okay. And through -- through the date of the effective
25 date, are you relying on the exculpation clause of the -- have

Seery - Redirect

249

1 you been relying on the exculpation clause in the January 9th
2 order that you testified to at the beginning of this hearing?

3 A Yeah. Both the January 9th order as well as the July
4 order with respect to my CEO/CRO positions.

5 Q Okay.

6 MR. MORRIS: I've got nothing further, Your Honor.

7 THE COURT: All right. Any recross on that redirect?

8 A VOICE: I believe Mr. Rukavina is speaking but is
9 muted, Your Honor.

10 THE COURT: Mr. Rukavina, do you have any recross?

11 MR. RUKAVINA: Your Honor, I do, yes. Thank you. I
12 apologize.

13 THE COURT: Okay.

14 MR. RUKAVINA: Can you hear me now?

15 THE COURT: Yes.

16 THE WITNESS: Yes.

17 MR. RUKAVINA: Thank you.

18 Mr. Vasek, if you'll please pull up the Debtor's Omnibus
19 Reply, Docket 1807. And if you'll go to Exhibit C. Do a word
20 search for Exhibit C. It's attached to it. Okay. Now scroll
21 down. Stop there.

22 RECROSS-EXAMINATION

23 BY MR. RUKAVINA:

24 Q Mr. Seery, do you see what's attached as Exhibit C to the
25 Omnibus Reply, which is proposed language in the confirmation

001736

1 order?

2 A I see the exhibit. I didn't know if this was -- I don't
3 know exactly what it's for. If it's proposed language, I'll
4 accept your representation.

5 MR. RUKAVINA: Well, scroll back up to Exhibit C, Mr.
6 Vasek. I want to make sure that I understand what you're
7 saying. Scroll back up. Do the word search for where Exhibit
8 C appears first. Start again. Okay. So scroll up.

9 BY MR. RUKAVINA:

10 Q So, you'll recall Mr. Morris was asking you about the
11 paragraph in here where you outlined the terms of the
12 agreement with the CLOs. Do you recall that testimony?

13 A Yes.

14 Q Okay. And then you see it says, The Debtor and the CLOs
15 agreed to seek approval of this compromise by adding language
16 to the confirmation order. A copy of that language is
17 attached hereto as Exhibit C and will be included in the
18 confirmation order.

19 Do you see that, sir?

20 A I do.

21 Q Okay.

22 MR. RUKAVINA: Mr. Vasek, go back to Exhibit C.

23 BY MR. RUKAVINA:

24 Q So it's correct that this Exhibit C is the referenced
25 agreement that the Debtor and the CLOs will seek approval of,

1 correct?

2 A The -- the -- it may be word-splitting, but I believe it
3 says that they've reached agreement and this is the language
4 that will evidence that agreement or embody that agreement.

5 Q Okay.

6 MR. RUKAVINA: Scroll down, Ms. Vasek, to the next
7 page, please.

8 BY MR. RUKAVINA:

9 Q Real quick, do the CLOs owe the Debtor any money for the
10 management fees?

11 A I don't -- well, the answer is there are accrued fees that
12 haven't been paid, but when they have cash they run through
13 the waterfall and pay them.

14 Q And I believe you mentioned to me those accrued fees
15 before. They're several million dollars, correct?

16 A It -- I don't know right off the top of my head. They can
17 aggregate and then they get paid down in the quarter depending
18 on the waterfall. And it's -- it's not a fair statement by
19 either of us to say the CLOs, as if they're all the same.
20 Each one is different.

21 Q I understand. But as of today, you agree that the CLOs
22 collectively owe some amount of money to the Debtor in accrued
23 and unpaid management fees?

24 A I believe that's the case.

25 Q Okay. And do you believe it's north of a million dollars?

1 A I don't recall.

2 Q Okay.

3 MR. RUKAVINA: Well, scroll down a couple of more
4 lines, Mr. Vasek. Stay there.

5 BY MR. RUKAVINA:

6 Q Sir, if you'll read with me, isn't the Debtor releasing
7 each Issuer, which is the CLOs, for and from any and all
8 claims, debts, et cetera, by this provision?

9 A Claims. Not -- not fees, but claims. I don't believe
10 there's any release of fees that the CLOs might owe and would
11 run through the waterfall here.

12 Q Okay. For and from any and all claims, debts,
13 liabilities, demands, obligations, promises, acts, agreements,
14 liens, losses, costs, and expenses, including without
15 limitation attorneys' fees and related costs, damages,
16 injuries, suits, actions, and causes of action, of whatever
17 kind or nature, whether known or unknown, suspected or
18 unsuspected, matured or unmatured, liquidated or unliquidated,
19 contingent or fixed.

20 Are you saying that that does not release whatever fees
21 have accrued and the CLOs owe?

22 A I don't believe it would. If it did, your client should
23 be ecstatic. But I don't believe it does that.

24 Q And you don't believe that it releases the CLOs of any and
25 all other obligations that they may have to the Debtor and the

1 estate?

2 A I -- again, I don't believe there are any, but I think
3 it's a broad release of claims away from the actual fees that
4 are generated by the Debtor. I don't believe there's an
5 intention to release fees that have accrued.

6 Q Have you seen this language before I showed it to you
7 right now?

8 A I believe I have, yes.

9 Q Okay. Take a minute. Can you point the Court to anywhere
10 where present or future fees under the CLO agreements are
11 excepted from the release?

12 A I could go through, I'll take your representation, but I
13 don't believe that that's what it -- it's supposed to release
14 fees. Again, if the fees are owed, they get paid, if there
15 are assets there to pay them.

16 Q Okay. This release and this settlement was never noticed
17 out as part of a 9019, was it?

18 A I don't believe so, no.

19 Q Okay. So, other than bringing it up here today, this is
20 the first that the Court, at least, has heard of this,
21 correct?

22 A Yeah, again, I don't --

23 MR. MORRIS: Objection to the form of the question.

24 THE WITNESS: Yeah. I just stated before that I
25 don't think this is a -- that there claims.

1 THE COURT: Wait. Slow down. I think --

2 MR. SEERY: Oh, I'm sorry, Your Honor.

3 THE COURT: -- there was an objection. Go ahead, Mr.
4 Morris.

5 MR. MORRIS: The notion that this is the first time
6 the Court has heard of this is just factually incorrect.
7 First of all, it's in the document from January 22nd. Second
8 of all, Mr. Seery testified to it last week at the preliminary
9 injunction hearing. I mean, --

10 THE COURT: I -- I --

11 MR. MORRIS: -- I don't know what the point of the
12 inquiry is, but there's -- this is not new news.

13 THE COURT: Okay. I sustain the objection.

14 BY MR. RUKAVINA:

15 Q And Mr. Seery, can you point me to any document where
16 counsel for the CLOs has signed this particular confirmation
17 order or any other document agreeing to this language in the
18 confirmation order?

19 A I don't think there's any document that's signed. I think
20 we already went over that. I think the email is evidence
21 their agreement to the general terms. I don't see any
22 agreement with respect to this particular language.

23 Q Well, you have no personal information? You're going on
24 what your lawyers told you that the CLOs agreed to, correct?

25 A That's correct.

Seery - Recross

255

1 Q Okay. You didn't personally --

2 A Excuse me. That's correct with respect to this language,
3 not with respect to the agreement. I was on the phone when
4 they agreed.

5 Q Okay. And they agreed orally, you're saying, to basically
6 the assumption of the CLO management agreements?

7 A Correct.

8 Q Okay.

9 MR. RUKAVINA: Thank you, Your Honor. I'll pass the
10 witness.

11 THE COURT: All right. Other recross?

12 MR. TAYLOR: Yes, Your Honor, I do.

13 THE COURT: Go ahead.

14 RECROSS-EXAMINATION

15 BY MR. TAYLOR:

16 Q Mr. Seery, Clay Taylor again. You worked -- I'm sorry,
17 let me restart. I believe you testified earlier, in response
18 to questions by Mr. Morris, that you didn't believe a Chapter
19 7 trustee would be very effective in monetizing these assets,
20 correct?

21 A I think I said I didn't believe that the Chapter 7 trustee
22 would be as effective at monetizing the assets as the
23 Reorganized Debtor would be, and me in the role as Claimant
24 Trustee.

25 Q And one of the reasons that you gave is you believe that

001742

1 the Chapter 7 trustee had to liquidate assets so quickly that
2 it could not be effective; is that correct?

3 A Typically, that's the case, yes.

4 Q You worked for the Lehman trustee, correct?

5 A That's incorrect.

6 Q Okay. Did you work on the Lehman case?

7 A Did I work in the case? No.

8 Q Okay. Did you -- how were you involved within -- within
9 the Lehman case?

10 A It's a long history, but I was a relatively senior person,
11 not senior level, not senior management level person at
12 Lehman. I ran the loan businesses and I helped a number of
13 other places and I -- in the organization. I helped construct
14 the sale of Lehman to Barclays out of the broker-dealer and
15 then helped consummate that sale.

16 Q Okay. I believe, in that case, it was a SIPC -- the
17 trustee was a SIPC trustee, correct?

18 A With respect to the broker-dealer.

19 Q Okay. And you believe that a SIPC trustee is very -- has
20 very similar rules with respect to asset sales; is that
21 correct?

22 A There are some similarities, absolutely.

23 Q Okay. And so in that case, the trustee was in place for
24 seven years, yet you believe -- you want this Court to believe
25 that a Chapter 7 trustee has to liquidate assets in a very

1 short time frame, is that correct?

2 MR. MORRIS: Objection to the form of the question.

3 THE WITNESS: Yeah, in the Lehman case, --

4 THE COURT: Overruled.

5 THE WITNESS: I'm sorry, Judge.

6 THE COURT: Go ahead.

7 THE WITNESS: In the Lehman case, the SIPC trustee
8 spent years litigating, not liquidating. The broker-dealer
9 was sold in our structured deal to Barclays, and then the SIPC
10 trustee liquidated the remainder of the estate, which was the
11 broker-dealer, but most of it had been sold to Barclays. It
12 was really a litigation case.

13 BY MR. TAYLOR:

14 Q But it did -- that trustee did sell off subsequent assets
15 after the initial sale, correct?

16 A That trustee, I don't think, managed -- I don't know about
17 that. The trustee didn't really manage any assets. Other
18 than litigations.

19 Q You've also testified that you didn't believe or that you
20 would not take on this role without the gatekeeper and
21 injunction -- gatekeeper role and injunction being in place;
22 is that correct?

23 A Yes.

24 Q And you're also familiar with the Barton Doctrine,
25 correct?

1 A I'm not.

2 Q Okay. Do you believe that a Chapter 7 trustee could be
3 sued by third parties without obtaining either relief from
4 this Court -- let me just stop there. Do you believe that a
5 Chapter 7 trustee could be sued without seeking leave of this
6 Court?

7 A I think it would be difficult. I know that Chapter 7
8 trustees have qualified immunity, so I think, whether it would
9 be leave of this Court or it's just that there's a very high
10 bar to suing them, I'm not exactly sure. It's not something
11 I've spent time on.

12 Q Okay. So a hypothetical Chapter 7 trustee would have no
13 need of the gatekeeper role or injunction if this case were
14 converted to one under Chapter 7, correct?

15 A That's probably true.

16 Q Thank you.

17 MR. TAYLOR: No further questions.

18 THE COURT: All right. Any other recross?

19 MR. DRAPER: Your Honor, I have nothing --

20 THE COURT: All right.

21 MR. DRAPER: -- further.

22 THE COURT: All right. I think we're done, but
23 anyone I've missed?

24 All right. Mr. Seery, it's been a long day. You are
25 excused from the virtual witness stand.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: All right. Mr. Morris, let's see if
3 there's anything else we can accomplish today. It's 4:18
4 Central time. Who would be your next witness?

5 MR. MORRIS: My next witness would be John Dubel,
6 Your Honor.

7 THE COURT: All right. Can you give us a time
8 estimate for direct?

9 MR. MORRIS: I wouldn't expect Mr. Dubel to be more
10 than 20 minutes or so, but I would offer the Court, if you
11 think it would be helpful, counsel for the CLO Issuers is on
12 the call, and I believe that they would be prepared to just
13 confirm for Your Honor that there is an agreement in
14 principle, just as Mr. Seery has testified to, and maybe you
15 want to hear from her. I know she's not really a witness, but
16 she might be able to make some representations to give the
17 Court some comfort that everything Mr. Seery has said is true.

18 THE COURT: I think that would be useful. Is it Ms.
19 Anderson or who is it?

20 MS. ANDERSON: That is -- it is, Your Honor. And you
21 know, I appreciate the testimony given. I certainly do not
22 want to testify, but thought it might be useful for the Court
23 to hear from us.

24 Amy Anderson on behalf of the Issuers from Jones Walker.
25 Schulte Roth also represents the Issuers. And I can represent

1 to the Court that the agreement as it's represented on Docket
2 1807, as more particularly described in Exhibit C, which Your
3 Honor has seen, is the agreement reached between the Issuers
4 and the Debtor.

5 There was some testimony about fees owed, accrued fees
6 owed to the Debtor. I certainly cannot speak to the substance
7 of each particular management agreement with each CLO. They
8 are all distinct and unique and very lengthy documents. I
9 will -- I can represent to the Court that any accrued fees
10 that are owed were not intended to be included in the release.
11 It is -- it is not meant to release fees owed to Highland
12 under the particular management agreements.

13 Of course, if the Court has any questions or if I can
14 provide anything further, I'm happy to. And I will be on the
15 hearing today and tomorrow, but I thought it might be useful,
16 given the topic of the testimony this afternoon.

17 THE COURT: All right. That was useful. Thank you,
18 Ms. Anderson.

19 All right. Well, Mr. Morris, shall we go ahead and hear
20 from Mr. Dubel today, perhaps finish up a second witness?

21 MR. MORRIS: Yeah. I think we have the time. I
22 think Mr. Dubel is here. Are you here, Mr. Dubel?

23 MR. DUBEL: I am. Can you hear me, Your Honor?

24 THE COURT: I can hear you, but I cannot see you.
25 Oh, now I can see you. Please raise your right hand.

Dubel - Direct

261

1 JOHN S. DUBEL, DEBTOR'S WITNESS, SWORN

2 THE COURT: All right. Thank you. Mr. Morris, go
3 ahead.

4 MR. MORRIS: Thank you very much, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. MORRIS:

7 Q Mr. Dubel, can you hear me?

8 A I can, Mr. Morris.

9 Q Okay. Do you have a position today with the Debtor, sir?

10 A I am a director of Strand Advisors, Inc., which is the
11 general partner of the Debtor.

12 Q Okay. And can you --

13 MR. MORRIS: Your Honor, just as a reminder, I'm
14 going to ask Mr. Dubel to describe his professional experience
15 in some detail, to put into context his testimony, but his
16 C.V. can be found at Exhibit 6Y as in yellow on Docket No.
17 1822.

18 THE COURT: All right.

19 BY MR. MORRIS:

20 Q Mr. Dubel, can you describe your professional background?

21 A Yes. I have approximately, almost, and I hate to say it
22 because it's making me feel old, but I have almost 40 years of
23 experience working in the restructuring industry.

24 I have served in many roles in that, both as an advisor,
25 an investor in distressed debt, and also a member of

001748

1 management teams, and as a director, both an independent
2 director and a non-independent director.

3 My executive roles have included the -- both an executive
4 director, chief executive officer, president, chief
5 restructuring officer, chief financial officer. And I have
6 been involved in some of the largest Chapter 11 cases over the
7 last several decades, including cases like *WorldCom* and
8 *SunEdison*.

9 Q Let's focus your attention for a moment just on the
10 position of independent director. Have you served in that
11 capacity before this case?

12 A I have.

13 Q Can you describe for the Court some of the cases in which
14 you've served as an independent director?

15 A Sure. I've served as an independent director in several
16 cases that were I'll call post-reorg cases. *Werner Company*,
17 which was the largest climbing equipment manufacturer in the
18 world, manufacturer of ladders, *Werner Ladders*. You'll see
19 them on every pickup truck running around the countryside.

20 *FXI Corporation*, which is a -- one of the largest foam
21 manufacturers. Everybody's probably slept or sat on one of
22 their products.

23 *Barneys New York*, back in 2012, when they did an out-of-
24 court restructuring. I had previously been involved with
25 *Barneys* 15 years before that, and so I was called upon because

Dubel - Direct

263

1 of my knowledge to be an independent director in that
2 situation. Have had no relationship with Barneys since it
3 emerged from Chapter 11 back in 1998.

4 I have been the independent director in *WMC Mortgage*,
5 which was a mortgage company owned by General Electric.

6 And I am currently serving as an independent director in a
7 company -- in two companies. One, *Alpha Media*, which is a
8 large radio station chain that recently filed Chapter 11, I
9 believe it was late Sunday night, and I am also an independent
10 director in the *Purdue Pharma* bankruptcy, and have served
11 prior to the bankruptcy and am the chair of the special
12 independent committee of directors -- special committee of
13 independent directors in that particular situation.

14 Q That sounds like a lot. In terms of other fiduciary
15 capacities, I think your C.V. refers to Leslie Fay. Were you
16 involved in that case, and if so, how?

17 A I was. That was -- for those people who may remember it,
18 that goes back into the 1993 era. *Leslie Fay* was a large
19 apparel manufacturer, and at the time was one of the largest
20 companies that had gone through an extensive fraud. I say at
21 the time because it was about a \$180 million fraud, which
22 pales by some of the ones that have followed it.

23 I was brought in as the executive vice president in charge
24 of restructuring, chief financial officer, and was also added
25 to the board of directors. Even though I wasn't independent,

001750

Dubel - Direct

264

1 I was added to the board of directors to have the fresh face
2 on the board in that particular situation because of the fraud
3 that had taken place.

4 Q And --

5 A Sun --

6 Q Go ahead.

7 A SunEdison, I was brought in as the CEO. Actually,
8 initially, as the chief restructuring officer, with a mandate
9 to replace the CEO, which took place shortly after I was
10 brought on board and -- because of various issues surrounding
11 investigations by the SEC, DOJ, and allegations by the
12 creditors of fraud. And so I was brought in to run the
13 company through its Chapter 11 process.

14 As I'd mentioned earlier, WorldCom, I was brought in at
15 the beginning of the case as the fresh chief financial
16 officer. And I think everybody is familiar with what happened
17 in the WorldCom situation.

18 Q All right. Based on that experience, do you have a view
19 as to whether the appointment of independent directors is
20 unusual?

21 A It is not. More recently, it has -- it had been in the
22 past. Usually, you know, they would try and take the existing
23 directors and form a special committee of the existing
24 directors. But I think the state of the art has become more
25 where independent directors are brought in, mainly because the

001751

1 cases have become a lot more complex in nature, and larger,
2 and the transactions themselves are much more sophisticated.
3 And so having somebody independent has been important for
4 analyzing the various transactions. And also, quite often,
5 it's just bringing a fresh, independent voice to the company
6 on the board.

7 Q Do you have an understanding as to the purpose and the
8 role of independent directors generally in restructuring and
9 bankruptcy cases?

10 A Sure. As I kind of alluded to a little bit earlier, the
11 -- probably the most critical thing is for restoring
12 confidence in the company and in the management in terms of
13 corporate governance, especially when there have been troubled
14 situations, where -- whether it's been fraud or allegations
15 made against the company and its prior management or when
16 management has left under difficult situations.

17 Also, you know, independent thought process being brought
18 to the board is very important for helping guide companies.
19 It's quite often the existing management team or the existing
20 board may get stuck in a rut, as you can say, you know, in
21 terms of their thinking on how to manage it, and having
22 somebody with restructuring experience who provides that
23 independent voice is very important to the operations.

24 In addition, having someone who can look at conflicts that
25 might arise between shareholders or shareholders and the board

Dubel - Direct

266

1 members is important. As I mentioned earlier, the *WMC*
2 *Mortgage* situation was one where I was brought on to -- as an
3 independent member of the board to effectively negotiate an
4 agreement or a settlement between WMC and its parent, General
5 Electric. That entity was being -- WMC was being sued for
6 billions of dollars, and there were issues as to whether or
7 not General Electric should fund those obligations. And so
8 that was a role that is quite often occurring in today's day
9 and age.

10 In addition, evaluating transactions for companies is
11 important, whereby either the shareholders who sit on the
12 board or board members may be involved in those transactions,
13 needing an independent voice to review it. And, you know, I
14 have served in situations. Again, *Barneys New York* and *Alpha*
15 *Media* is another example where, as an independent director, I
16 am one of the parties responsible for evaluating those
17 transactions and making recommendations to the entire board.

18 And then, again, you know, situations where it's just
19 highly-contentious and having, as I said, having that
20 independent view brought to the table is something that is
21 very helpful in these cases.

22 Q I appreciate the fulsomeness of the answer. During the
23 time that you served in these various fiduciary capacities, is
24 it fair to say you spent a lot of time considering and
25 addressing issues relating to D&O and other executive

001753

1 liability issues?

2 A It's usually one of the things that you get involved with
3 thinking about prior to taking on the role because you want to
4 make sure that there are the appropriate protections for the
5 director.

6 Q Can you describe for the Court some of the protections
7 that you've sought or that you've seen employed in some of the
8 cases you've worked on, including this one, by the way?

9 A Sure. I mean, one of the first things you look to is does
10 the company -- will the company indemnify the director for
11 serving in that capacity? And if the company will not
12 indemnify, then there's always a question as to why not, and
13 it's probably something you don't want to get involved with.

14 Generally, that is something that I don't think I've ever
15 seen a case where there has not been indemnification.
16 Obviously, it would, you know, cause great pause or concern if
17 they weren't willing to indemnify. But that is important.

18 Providing D&O insurance is very important. And in most
19 situations, you know, over the last 10-15 years, if there's
20 not adequate D&O insurance -- quite often, the D&O insurance
21 has been tapped out because of claims that will -- have been
22 brought or are anticipated to be brought -- new D&O insurance
23 is something that's front and center for the minds of
24 independent directors such as myself.

25 As you -- that gets you into the case and gets you moving.

Dubel - Direct

268

1 As you start to look towards the confirmation and exit from
2 the case, things that would be appropriate, that, you know,
3 would always be something you would want to look at would be
4 exculpation language, releases. And in this particular case,
5 the injunction, or what Mr. Seery earlier referred to as the
6 gatekeeper clause, is something that is very important for
7 directors, both, you know, as they're thinking through it and
8 as they emerge.

9 Q All right. Let's shift now to this case, with that
10 background. How did you learn about this case?

11 A I had a party who was involved in the case reach out to me
12 in early part of December of 2019 to see if I would be
13 interested in getting involved. I think that was about the
14 time -- it was after -- as I recall, it was after the case had
15 been moved to Dallas and when there was a -- consideration of
16 either a Chapter 11 or a Chapter 7 trustee. I can't remember
17 exactly which it was. But there was talk about a motion to
18 bring on a trustee and get rid of all the management and the
19 like and such.

20 Q Can you describe in as much detail as you can recall the
21 facts and circumstances that led to your appointment as an
22 independent director?

23 A Sure. I, as I said, I had -- early December, I had an --
24 one of the parties involved -- had, probably within the next
25 week, probably two or three others -- that reached out to see

001755

Dubel - Direct

269

1 if I would be interested in participating. I met with the
2 Creditors' Committee or -- I'm not sure if it was all the
3 members, but representatives of the Creditors' Committee,
4 along with counsel, and I believe financial advisors were
5 involved. They walked me through the issues. They wanted to
6 hear about my C.V. Quite a few of them knew me, knew me well,
7 but others wanted to hear about my background and how I would
8 look at things as an independent director.

9 That went through into the latter part of December. I
10 knew that they were talking to other parties. I think it was
11 probably right around the first of the year or so that I was
12 informed, maybe a little bit earlier than that, that I was
13 informed that Mr. Seery was one of the other parties that they
14 were talking to, and Mr. Seery and I were put in touch with
15 each other. I had worked with Mr. Seery back probably nine
16 years earlier when I was the CEO of FGIC. He was involved in
17 a matter that we were restructuring, and so knew him a little
18 bit and was comfortable working with him as a, you know,
19 another independent director.

20 Then we took the time that we had to to -- or, I took the
21 time to -- from the beginning, you know, the early part of
22 December, look at the docket, understand what was taking
23 place. I -- in addition, I met with the company and its
24 advisors, in-house counsel, the folks at DSI who were at the
25 time the CRO and the company's counsel to better understand

001756

Dubel - Direct

270

1 some of the issues.

2 Mr. Seery and I, as I said, were both selected, and we
3 went through the process of, I guess, breaking the tie, I
4 think, if I could say it that way, amongst the creditors and
5 the Debtor as to who would be the third member of the board.
6 And we were given the opportunity to go out, interview, and
7 select the third member, which resulted in Russell Nelms'
8 appointment to the board. And also during that time, we were
9 given the opportunity to have some input -- not a hundred
10 percent input, but some input -- on the January 9th order that
11 -- the January 9, 2020 order that was put in place appointing
12 us and giving us some of the protections that we felt were
13 appropriate and necessary in this case.

14 Q All right. We'll get to that in a moment, but during this
15 diligence period, did you form an understanding as to why an
16 independent board was being formed, why it was being sought?

17 A Yes. There was, my words, there was a lot of distrust
18 between the creditors and the management -- not the CRO, but
19 the prior management of the company -- and there had been a
20 motion brought both to obviously bring the case back to Dallas
21 from I think it was originally in Delaware and then there was
22 a motion to seek, you know, to remove management and put in a
23 trustee.

24 There had been a dozen years of litigation with one party,
25 about eight or nine years with another major party, and

001757

1 several other of the major creditors were litigants. The
2 other, as I understood, the other creditors, main creditors in
3 the case were all lawyers who had not yet gotten paid for the
4 litigation work that they had done. And so it was obvious
5 that this was a very -- a highly-litigious situation.

6 Q In addition to speaking with the various constituents, did
7 you do any diligence on your own to try to understand the case
8 before you accepted the appointment?

9 A Yes. I went to the docket to look at all the -- not every
10 single thing that had been filed, but to try and look at all
11 the key, relevant items that had been filed, get a better
12 understanding of what was out there. Looked at some of the
13 initial filings of the company in terms of the, you know, the
14 creditors, to understand who the creditor base was per the
15 schedules that had been filed. Looked at the -- some of the
16 various pleadings that had been put in place.

17 Q Did you form a view as to the causes of the bankruptcy
18 filing?

19 A Litigation. That was my clear view. This company had
20 been in litigation with multiple parties, various different
21 parties, since around 2008. Generally, you would see
22 litigation like the types that were, you know, that were here,
23 you know, you'd litigate for a while, then you'd try and
24 settle it.

25 It did not appear to me that there was any intention on

Dubel - Direct

272

1 the -- the Debtor to settle these litigations, but would
2 rather just continue the process and proceed forward on the
3 litigation until the very last minute. And so it was obvious
4 that this was going to -- that the Debtor was a, as I said, a
5 highly-litigious shop, and that was one of the causes,
6 obviously, the cause of the filing, along with the fact that
7 judgments were about to be entered against the Debtor.

8 Q All right. And in January 2020, do you recall that's when
9 the agreement was reached between the Debtor, the Committee,
10 and Mr. Dondero?

11 A Yeah, it was the first week or so, which resulted in a
12 hearing on I believe it was January 9th in front of Judge
13 Jernigan.

14 Q And as a part of that -- I think you testified at that
15 hearing. Do I have that right?

16 A I don't recall if I did. I might have. I might have
17 testified at a subsequent hearing. But --

18 Q But was --

19 A -- I was in the courtroom for that hearing, yes.

20 Q Was it part of that process by which you accepted the
21 appointment as independent director?

22 A I accepted it based upon the order that had been
23 negotiated amongst the parties, the creditors, the Debtor, Mr.
24 Dondero, and others. And that was the key thing that was --
25 and approved by the Court on that date. And that was key for

001759

Dubel - Direct

273

1 my acceptance of the role as an independent director.

2 Q And did you and the other prospective independent
3 directors participate in the negotiation of the substance of
4 the agreement?

5 A We did. We didn't have a hundred percent say over it, but
6 we were able to get our voices heard. As Mr. Seery testified
7 earlier, he was instrumental in coming up with an idea about
8 how to put in place the injunction, you know, the -- I think
9 he referred to it as the gatekeeper injunction, which was
10 obviously in this case very critical to all three of us: Mr.
11 Seery, Mr. Nelms, and myself.

12 Q Can you describe for the Court kind of the issues of
13 concern to you and the other prospective board members? What
14 was it that you were focused on in terms of the negotiations?

15 A Well, obviously, indemnification was important, but that
16 was something that was going to be granted. Having the right
17 to obtain separate D&O insurance just for the three directors
18 was important. We were concerned that Strand Advisors, Inc.
19 really had no assets, and so we wanted to make sure that the
20 Debtor was going to get -- was going to basically guarantee
21 the indemnification.

22 The -- because of the litigious nature and what we had
23 heard from all of the various parties involved, including
24 people inside the Debtor who we had talked with, that it would
25 be something that was important for us to make sure that the

001760

1 injunction, the gatekeeper injunction was put in place.

2 Q And can you elaborate a little bit on I think you said you
3 had done some diligence and you had formed a view as to the
4 causes of the bankruptcy filing, but did this case present any
5 specific concerns or issues that you and the board members had
6 to address perhaps above and beyond what you experienced in
7 some of the other cases you described?

8 A Well, as I said earlier, the fact that the litigation --
9 the various litigations with the creditors have been going on
10 for what I viewed as an inordinate amount of years, and that
11 it was clear from my diligence that I had done that this had
12 been directed by Mr. Dondero, to keep this moving forward in
13 the litigation, and to, in essence, just, you know, never give
14 up on the litigation.

15 It was important that the types of protections that we
16 were afforded in the January 9th order were put in place,
17 because we -- none of us -- none of the three of us, and
18 myself in particular, did not want to be in a position where
19 we would be sued and harassed through lawsuits for the next,
20 you know, ten years or so. That's not something anybody would
21 want to sign up for.

22 Q All right. Let's look at the January 9th order and the
23 specific provisions I think that you're alluding to.

24 MR. MORRIS: Can we call up Exhibit 5Q, please?

25 THE WITNESS: Pardon me while I put my glasses on to

1 read this.

2 MR. MORRIS: All right. And if we can go to
3 Paragraph 4.

4 BY MR. MORRIS:

5 Q Is that the paragraph, sir, that was intended to address
6 the concern that you just articulated about Strand not having
7 any assets of its own?

8 A Yes, it is.

9 Q And can you just describe for the Court how that
10 particular provision addressed that concern?

11 A Sure. Since we were directors of Strand, which is the
12 general partner of the Debtor, we felt it was important that
13 the general -- that Highland, the Debtor, would provide the
14 guaranty on indemnification, because Highland had the assets
15 to back up the indemnification.

16 It was also pretty clear, from my experience in having
17 placed D&O insurance, you know, over the last 25-30 years,
18 that if there was no, you know, opportunity for
19 indemnification, putting in place insurance would be very
20 difficult or exorbitantly expensive. So having this
21 indemnification by Highland was a very important piece of the
22 order that we were seeking.

23 Q And the next piece is the insurance piece in Paragraph 5.
24 Do you see that?

25 A I do.

1 Q Did you have any involvement in the Debtor's efforts to
2 obtain D&O insurance for the independent board?

3 A I did.

4 Q Can you just describe for the Court what role you played
5 and what issues came up as the Debtor sought to obtain that
6 insurance?

7 A Sure. The Debtors had been looking to get an insurance
8 policy in place. They were not able to do that. I happen to
9 have worked with an insurance broker on D&O situations in some
10 very difficult situations over the years and brought them into
11 the mix. They were able to go out to the market and find a
12 policy that would cover us, the -- kind of the key components
13 of that policy, though, were, number one, the guaranty that
14 HCMLP would give -- I'm sorry, the guaranty that HCMLP would
15 give to Strand's obligations, and also the -- I'll call it the
16 gatekeeper provision was very important because these parties
17 did not want to have -- they wanted to have what was referred
18 to, commonly referred to as the Dondero Exclusion.

19 So while we were -- we purchased a policy that covered us,
20 it did have an exclusion, unless there were no assets left,
21 and then the what I'll call -- we refer to as kind of a Side A
22 policy would kick in.

23 Q Okay. What do you mean by the Dondero Exclusion?

24 A The insurers did not want to cover the -- any litigation
25 that Mr. Dondero would bring against directors. It was pretty

Dubel - Direct

277

1 commonly known in the marketplace that Mr. Dondero was very
2 litigious, and insurers were not willing to write the
3 insurance without the protections that this order afforded
4 because they did not want to be hit with frivolous -- hit with
5 claims on the policy for frivolous litigation that might be
6 brought.

7 MR. TAYLOR: Your Honor, this is Mr. Taylor. I've
8 got to object to the last answer. He testified as to what the
9 insurers' belief was and what they would or would not do based
10 upon their own knowledge. It's not within his personal
11 knowledge. And therefore we'd move to strike.

12 THE COURT: I overrule that objection.

13 MR. MORRIS: Your Honor?

14 THE COURT: I overrule the objection.

15 MR. MORRIS: Thank you. Thank you, Your Honor.

16 BY MR. MORRIS:

17 Q Mr. Dubel, can you explain to the Court, in your work in
18 trying to secure the D&O insurance, what rule the gatekeeper
19 provision played in the Debtor's ability to get that?

20 A Based upon my discussions with the insurance broker, who I
21 have worked with for 25-plus years, had that gatekeeper
22 provision not been put in place, we would not have been able
23 to get insurance.

24 Q All right. Let's look at the gatekeeper provision.

25 MR. MORRIS: Can we go down to Paragraph 10, please?

001764

1 Perfect. Right there.

2 BY MR. MORRIS:

3 Q Is this gatekeeper provision, is this also the source of
4 the exculpation that you referred to?

5 A Yes.

6 Q And what's your understanding of how the exculpation and
7 gatekeeper functions together?

8 A Well, my apologies, I'm not an attorney, so just from a
9 business point of view, the way I look at this is that, you
10 know, obviously, we're -- you know, the directors are not
11 protected from willful misconduct or gross negligence, but any
12 negligence -- you know, claims brought under negligence and
13 the likes of such, and things that might be considered
14 frivolous, would have to first go to Your Honor in the
15 Bankruptcy Court for a review to determine if they were claims
16 that should be entitled to be brought.

17 Q If you take a look at the provision, right, do you
18 understand that nobody can bring a claim without -- in little
19 i, it says, first determining -- without the Court first
20 determining, after notice, that such claim or cause of action
21 represents a colorable claim of willful misconduct or gross
22 negligence against an indirect -- independent director. Do
23 you see that?

24 A I do.

25 Q Is it your understanding that parties can only bring

1 claims for gross negligence or willful misconduct if the Court
2 makes a determination that there is a colorable claim?

3 A That's my understanding.

4 Q And the second --

5 A I think they have the right -- I think they have the right
6 to go to the Court to ask if they can bring the claim, but the
7 Court has to make the determination that it's a colorable
8 claim for willful misconduct or gross negligence.

9 Q And if the Court -- is it your understanding that if the
10 Court doesn't find that there is a colorable claim of willful
11 misconduct or gross negligence, then the claim can't be
12 brought against the independent directors?

13 A That is my understanding, yes.

14 Q And was -- taken together, Paragraphs 4, 5, and 10, were
15 they of importance to you and the other independent directors
16 before accepting the position?

17 A They were absolutely critical to me and definitely
18 critical to the other directors, because we all negotiated
19 that together, and it would -- I don't -- I don't think any of
20 the three of us would have taken on this role if those
21 paragraphs had not been included in the order.

22 Q Okay. Just speaking for yourself personally, is there any
23 chance you would have accepted the appointment without all
24 three of those provisions?

25 A I would not have.

1 Q And why is that? In this particular case, why did you
2 personally believe that you needed all three of those
3 provisions?

4 A Well, you know, people like myself, you know, someone
5 who's coming in as an independent director, come in in a
6 fiduciary capacity. And, you know, we take on risks. Now,
7 granted, in a Chapter 11 case, as the saying goes, you know,
8 it's a lot safer because everything has to be approved by the
9 Court, but there are still opportunities for parties to, in
10 essence, have mischief going on and bring nuisance lawsuits
11 that would take a lot of time and effort away from either the
12 role of our job of restructuring the entity or post-
13 restructuring, would just be nuisance things that would cost
14 us money. And we, you know, I did not want to be involved in
15 that situation, knowing the litigious nature of Mr. Dondero
16 from the research that I had done, you know, the diligence
17 that I had done. I did not want to subject myself to that.
18 And it has proven an appropriate and very solid order because
19 of the conduct of Mr. Dondero, as Mr. Seery has testified to
20 earlier.

21 Q Do you have a view as to what the likely effect would be
22 on future corporate restructurings if you and your fellow
23 directors weren't able to obtain the type of protection
24 afforded in the January 9th order?

25 A I think it would be very difficult to find qualified

Dubel - Direct

281

1 people who would be willing to serve in these types of
2 positions if they knew they had a target on their backs. You
3 know, it was something that was clear to us, to Mr. Seery, Mr.
4 Nelms, myself at the time, that if we had a target -- we felt
5 like we would have a target on our back if we didn't have
6 these protections.

7 It just wasn't worth the risk, the stress, the
8 uncertainty, the potential cost to us. And so I don't think
9 anybody else would be, you know, willing to take on the roles
10 as an independent director with the facts and circumstances
11 and the players involved in this particular case.

12 MR. MORRIS: I have no further questions, Your Honor.

13 THE COURT: All right. Pass the witness. Let's see.
14 You went -- I'm going to give a time. You went 32 minutes.
15 So, for cross of this witness, I'm going to limit it to an
16 aggregate of 32 minutes. Who wants to go first?

17 MR. DRAPER: Your Honor, this is Douglas Draper.
18 I'll be happy to go first.

19 THE COURT: All right.

20 CROSS-EXAMINATION

21 BY MR. DRAPER:

22 Q Mr. Dubel, prior to your engagement, did you happen to
23 read the case of *Pacific Lumber*?

24 A I did not.

25 Q And were you advised about *Pacific Lumber* by somebody

001768

1 other than a -- your lawyer?

2 A I'm not familiar with the case at all, Mr. Draper.

3 Q Are you aware, and you've been around a long time, that
4 different circuits have different rules for liabilities of
5 officers, directors, and people like that?

6 A I am aware that there are different, I don't know what the
7 right term is, but precedents, I guess, in different circuits
8 for any number of things, whether it's a sale motion or
9 protections of officers and directors or anything. So each
10 circuit has its own unique situations.

11 Q And one last question. On a go-forward, after -- if this
12 plan is confirmed and on the effective date, you will not have
13 any role whatsoever as an officer or director of the new
14 general partner, correct?

15 A I have not been asked to. As Mr. Seery testified, he may
16 ask for assistance or just -- in most situations that I'm
17 involved with, I may have a continuing role just as a -- I'll
18 call it an advisor or somebody to provide a history. But at
19 this point in time, I have not been asked to have any
20 involvement.

21 Q And based on your experience, you know that there's a
22 different liability for a director and an officer versus
23 somebody who is an advisor?

24 MR. MORRIS: Objection to the form of the question.
25 No foundation.

Dubel - Cross

283

1 THE COURT: Overruled.

2 MR. DRAPER: Mr. Dubel has shown --

3 THE COURT: Mr. Dubel, you can answer if you know.

4 MR. DRAPER: Mr. Dubel, you can answer.

5 THE WITNESS: I'm sorry, Your Honor, I didn't hear
6 you say overruled. Thank you.

7 Mr. Draper, I apologize, could you repeat the question?

8 BY MR. DRAPER:

9 Q The question is you know from your experience that there's
10 a different liability for somebody who is an officer or
11 director versus somebody who's an advisor?

12 A Yes, that's my experience, which is why in several
13 situations post-reorganization, while I have not been involved
14 per se, and I use the term involved meaning, you know, on a
15 day-to-day basis, if someone asks me to assist, I'll usually
16 ask them to bring me in as a non -- an unpaid employee or a,
17 you know, a nominally-amount-paid employee, so that I would be
18 protected by whatever protections the company might provide.

19 MR. DRAPER: I have nothing further for this witness,
20 Your Honor.

21 THE COURT: All right. Other cross?

22 MR. TAYLOR: Yes, Your Honor.

23 MR. RUKAVINA: Yes, Your Honor.

24 MR. TAYLOR: Oh, go ahead, Davor.

25 MR. RUKAVINA: No, Clay, go ahead.

001770

Dubel - Cross

284

1 CROSS-EXAMINATION

2 BY MR. TAYLOR:

3 Q Mr. Dubel, this is Clay Taylor here on behalf on Mr.
4 Dondero. I believe you had previously testified in response
5 to questions from Mr. Morris that Mr. Dondero had engaged in a
6 pattern of litigious behavior; is that correct?

7 A I believe that's the testimony I gave, yes.

8 Q Okay. And please give me the specific examples of which
9 cases you believe he has engaged in overly-litigious behavior.

10 A Well, all of the cases that resulted in creditors, large
11 creditors in our bankruptcy. That would be the UBS situation,
12 the Crusader situation which became the Redeemer Committee,
13 litigation with Mr. Daugherty, with Acis and Mr. Terry. And
14 as I mentioned earlier, I'd, you know, been informed by
15 members of the management team that it was Mr. Dondero's style
16 to just litigate until the very end to try and grind people
17 down.

18 Q Okay. Was Mr. Dondero or a Highland entity the plaintiff
19 in the UBS case?

20 A No, but what was referred -- what I was referring to was
21 the nature in which he defended it and went overboard and
22 refused to ever, you know, try and settle things in a manner
23 that would have gotten things done. And just looking at,
24 having been involved in the restructuring industry for the
25 last 40 years, as I said, almost 40 years, and been involved

001771

1 in many, many litigious situations, it's obvious when someone
2 is litigious, whether they're the plaintiff or the defendant.

3 Q So are you personally familiar with the settlement
4 negotiations in the UBS case that happened pre-bankruptcy,
5 then?

6 A I have been informed that there were settlement
7 negotiations, and subsequently determined, through discussions
8 with the parties, that they weren't really close to -- to a
9 settlement.

10 Q But are you aware of --

11 A Mr. Dondero might have thought they were, but they were
12 not.

13 Q Okay. Would you be surprised to learn if UBS had offered
14 to settle pre-bankruptcy for \$7 million?

15 A As I understand, settlements -- settlement offers pre-
16 bankruptcy had a tremendous number of -- I don't know what the
17 right term is -- things tied to it and that clearly were never
18 going to get done.

19 Q Okay. When you say things were tied to it, what things
20 were tied to it?

21 A I don't know all of the settlement discussions that took
22 place, but what I was informed was that there were a lot of
23 conditions that were included in that. And it's -- if it had
24 been an offer of \$7 million and Mr. Dondero didn't settle for
25 that, there must have been a reason why. So, you know, since

1 the entities -- all of the entities within the Highland
2 Capital empire, if you'd call it that, were being sued for
3 almost a billion dollars.

4 Q Okay. And you say there was lots of conditions that were
5 tied to that. What were the conditions?

6 A As I said earlier, I wasn't informed of them on all the
7 prepetition settlements. That's just what I was told, there
8 was conditions.

9 Q Okay. And who were you told these things by?

10 A Both external counsel and internal counsel. Mr.
11 Ellington, Scott Ellington, and Isaac -- the litigation
12 counsel.

13 Q Okay. So --

14 A That's -- sorry.

15 Q Okay. In each of these cases, you were informed by your
16 views by statements that were made to you by other people?

17 A Yes.

18 Q Okay.

19 A Made -- and particularly made by members of management of
20 the Debtor, which is pretty informed.

21 Q Okay. Which members of management were those?

22 A As I just testified, it was Mr. Ellington, who was the
23 general -- the Debtor's general counsel, and Mr. Leventon,
24 Isaac Leventon, who was the -- I believe his title was
25 associate general counsel in charge of litigation.

Dubel - Cross

287

1 Q Okay. Thank you.

2 MR. TAYLOR: No further questions.

3 THE COURT: All right. Mr. Rukavina?

4 CROSS-EXAMINATION

5 BY MR. RUKAVINA:

6 Q Mr. Dubel, we've never met, although I think we were on
7 the phone once together. I know you're a director, so you're
8 at the top, but having been in this case for more than a year,
9 you probably have some understanding of the assets that the
10 Debtor has, don't you?

11 A I do, but I'm not as facile with it as Mr. Seery,
12 obviously.

13 Q Sure. Is it true, to your understanding, that the Debtor
14 owns various equity interests in third-party companies?

15 A Either directly or indirectly. That's my understanding,
16 yes.

17 Q Okay. Have you heard of an entity called Highland Select
18 Equity Fund, LP?

19 A I have.

20 Q And is that a publicly-traded company?

21 A I'm not familiar with its nature there, no.

22 Q Do you know how much of the equity of that entity the
23 Debtor owns?

24 A I don't know off the top of my head, no.

25 Q And again, these may be unfair questions because you're at

001774

1 the top, so I'm not trying to make you look foolish. I'm just
2 trying to see. Let me ask one more. Have you heard of
3 Wright, W-R-I-G-H-T, Limited?

4 MR. MORRIS: Objection, Your Honor. Beyond the
5 scope.

6 MR. RUKAVINA: Your Honor, I can recall him on my
7 direct, then.

8 THE COURT: Yeah. I'll --

9 MR. RUKAVINA: But I'd just rather get it over with.

10 THE COURT: I'll allow it.

11 MR. MORRIS: All right. If we're going to get rid of
12 --

13 THE COURT: Overruled.

14 MR. MORRIS: No, that's fine.

15 BY MR. RUKAVINA:

16 Q Have you heard of Wright, W-R-I-G-H-T, Limited?

17 A I think I have, but I just don't recall it, Mr. Rukavina.
18 I'm sorry, Rukavina. Sorry.

19 Q It's okay. It's a --

20 A I'm looking at your chart here, at your name here, and it
21 looks like Drukavina, so I really apologize.

22 Q Believe it or not, it's actually a very famous name in
23 Croatia, although it means nothing here.

24 So, all of the entities that the Debtor owns equity in, I
25 guess you probably, just because, again, you're not in the

1 weeds, you can't tell us how much of that equity the Debtor
2 owns, can you?

3 A I can't individually, no. You know, Mr. Seery is our CEO
4 and he's responsible for the day-to-day, you know, issues. So
5 usually we look at it more on a consolidated basis and not in
6 the, you know, down in the weeds, as you refer to it, unless
7 something specific came up.

8 Q Well, would you remember whether, when Mr. Seery or the
9 prior CRO would provide you, as the board member, financial
10 reports, whether that included P&Ls and balance sheets and
11 financial reports for the entities that the Debtor owned
12 interests in?

13 A We might -- we would have seen certain consolidating
14 reports that might -- that would be, you know, consolidating
15 financial statements that would be P&Ls. Where we didn't
16 consolidate them, I'm not sure we saw the actual individual-
17 entity P&Ls on a regular basis. We might have seen them if
18 there was a transaction taking place. But again, you know, I
19 don't have -- I don't remember every single one of them, no.

20 Q And you would agree with me, sir, that the Pachulski law
21 firm is an excellent restructuring, reorganization, insolvency
22 law firm, wouldn't you?

23 A Yes, I would agree with you there.

24 Q Okay. And you would expect them to ensure that anything
25 that has to be filed with Her Honor is timely filed, wouldn't

Dubel - Cross

290

1 you?

2 A I would expect that they would follow the rules.

3 Q Okay. And you have the utmost of confidence, I take it,
4 in your CRO, don't you?

5 A I have a tremendous amount of confidence in our CEO, who
6 also happens to hold the title of CRO, yes, if that's what
7 you're referring to as, Mr. Seery.

8 (Interruption.)

9 MR. RUKAVINA: John.

10 BY MR. RUKAVINA:

11 Q Okay, I think -- yeah, I think I heard that you have
12 tremendous confidence in the CEO, who happens to be the CRO,
13 right?

14 A Yes, that's the case.

15 MR. RUKAVINA: Thank you, Your Honor. I'll pass the
16 witness.

17 THE COURT: All right. Any other cross of Mr. Dubel?
18 All right. Mr. Morris, redirect?

19 MR. MORRIS: Yeah, just very briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. MORRIS:

22 Q You were asked about that *Pacific Lumber* case, Mr. Dubel;
23 do you remember that?

24 A I do remember being asked about it.

25 Q And you weren't familiar with that case, right?

001777

Dubel - Redirect

291

1 A I'm not familiar with the name of the case, no.

2 Q But you did know that the exculpation and gatekeeping
3 provisions were going to be included in the order; is that
4 fair?

5 A I did.

6 Q And did you testify that you wouldn't have accepted the
7 position without it?

8 A I did testify that way.

9 Q And if you knew that you couldn't get those provisions in
10 the Fifth Circuit, would you ever accept a position as an
11 independent director in the Fifth Circuit on a go-forward
12 basis?

13 A Not in a situation such as this, no.

14 Q Okay. Okay.

15 MR. MORRIS: No further questions, Your Honor.

16 THE COURT: All right. Any recross on that narrow
17 redirect?

18 All right. Well, Mr. Dubel, you are excused from the
19 virtual witness stand.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: All right. I want to go ahead and --

22 MR. DUBEL: Do you mind if I turn my video off?

23 THE COURT: I'm sorry, what?

24 MR. DUBEL: I said, do you mind if I turn my video
25 off?

001778

1 THE COURT: No, you may. That's fine.

2 MR. DUBEL: Thank you, Your Honor.

3 THE COURT: All right. I want to break now, unless
4 there's any quick housekeeping matter. Anything?

5 MR. MORRIS: No, Your Honor, but I would just ask
6 all parties to let me know by email if they have any
7 objections to any of the exhibits on the witness list that was
8 filed at Docket No. 1877, because I want to begin tomorrow by
9 putting into evidence the balance of our exhibits.

10 MR. RUKAVINA: And Your Honor, I was responsible for
11 this due to an internal mistake. The only ones I have an
12 objection to are -- is that 7? John, is that 7, right, 700 --

13 MR. MORRIS: Yes.

14 MR. RUKAVINA: Your Honor, I only have an objection
15 to 70 and 7P, although I think -- think the Court has already
16 admitted 7P, so my objection is moot.

17 THE COURT: I have.

18 MR. RUKAVINA: Okay.

19 THE COURT: So, what --

20 MR. RUKAVINA: Then it would just be --

21 THE COURT: Go ahead.

22 MR. RUKAVINA: I'm sorry. It would just be 70.
23 Septuple O or whatever the word is.

24 THE COURT: All right. So I will go ahead and admit
25 7F through 7Q, with the exception of 70. Again, these appear

1 at Docket Entry 1877. And Mr. Morris, you can try to get in
2 70 the old-fashioned way if you want to.

3 MR. MORRIS: Yeah, I'll deal with 70 and the very
4 limited number of other objections at the beginning of
5 tomorrow's hearing.

6 THE COURT: All right.

7 (Debtor's Exhibits 7F through 7Q, with the exception of
8 70, are received into evidence.)

9 THE COURT: So we will reconvene at 9:30 Central time
10 tomorrow. I think we're going to hear from the Aon, the D&O
11 broker, Mr. Tauber; is that correct?

12 MR. MORRIS: That's right. And that should be
13 shorter than even Mr. Dubel.

14 THE COURT: All right. Well, we will see you at 9:30
15 in the morning. We are in recess.

16 MR. MORRIS: Thank you so much.

17 THE CLERK: All rise.

18 (Proceedings concluded at 5:09 p.m.)

19 --oOo--

20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 **/s/ Kathy Rehling**

02/04/2021

24 _____
25 Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

INDEX

1		
2	PROCEEDINGS	5
3	OPENING STATEMENTS	
4	- By Mr. Pomerantz	12
5	- By Mr. Kathman	29
6	- By Mr. Clemente	33
7	- By Mr. Draper	40
8	- By Mr. Rukavina	42
9	- By Mr. Taylor	44
10	- By Mr. Kathman	49
11	- By Ms. Drawhorn	50
12	WITNESSES	
13	<u>Debtor's Witnesses</u>	
14	James P. Seery	
15	- Direct Examination by Mr. Morris	58
16	- Cross-Examination by Mr. Rukavina	169
17	- Cross-Examination by Mr. Taylor	212
18	- Cross-Examination by Mr. Draper	233
19	- Redirect Examination by Mr. Morris	236
20	- Recross-Examination by Mr. Rukavina	249
21	- Recross-Examination by Mr. Taylor	255
22	John S. Dubel	
23	- Direct Examination by Mr. Morris	261
24	- Cross-Examination by Mr. Draper	281
25	- Cross-Examination by Mr. Taylor	284
	- Cross-Examination by Mr. Rukavina	287
	- Redirect Examination by Mr. Morris	290
	EXHIBITS	
	Debtor's Docket 1822 Exhibits	Received 55
	(exclusive of Exhibits B, D, E, 4D, 4E, 4G, 5T, 6R, 6S, 6T, and 6U)	
	Debtor's Docket 1866 Exhibits	Received 56
	Debtors' Exhibits 7F through 7Q (exclusive of Exhibit 7O)	Received 293
	Debtor's Exhibit 7P	Received 140
	Debtor's Exhibit 7Q	Received 75

INDEX
Page 2

RULINGS

Confirmation Hearing [1808] - *Continued to 2/3/2021* 293

Agreed Motion to (1) Assume Non-Residential Real Property Lease with Crescent TC Investors, LP upon Confirmation of Plan and (II) Extend Assumption Deadline [1624] - *Continued to 2/3/2021* 293

END OF PROCEEDINGS 293

INDEX 294-295